

Effective

**CHAPTER 1
GENERAL PROVISIONS**

RULE 101 TITLE.

[RESERVED]

RULE 102

102.01 DEFINITIONS.

When the terms listed below are used in the Act, these Rules, the forms, and the instructions and orders of the Commissioner, the following definitions shall apply (unless the context indicates otherwise), together with the definitions which may hereinafter appear, to the extent that they are not inconsistent with the definitions provided in Section 23-42-102 of the Act.

- (1) ACCESS TO OR FURNISHING OF INFORMATION.** Access to or furnishing of information can only exist by reason of the purchaser's position with respect to the issuer or seller. Position means an employment or family relationship or economic bargaining power that enables the purchaser to obtain information from the issuer or seller in order to evaluate the merits and risks of a prospective investment. In any event, each purchaser or his legal, financial or other representative(s), or both, shall have access to or have been furnished during the course of the transaction and prior to the sale, by the issuer or any person acting on its behalf, or the seller or any person acting on its behalf, the same kind of information that is required by a registration under the Act, to the extent that the issuer or seller possesses such information or can acquire it without reasonable effort or expense. This condition shall be deemed to be satisfied if the purchaser or his legal, financial or other representative(s) is furnished with information, either in the form of documents actually filed with the Commissioner or otherwise. The issuer or seller shall make available, during the course of the transaction and prior to sale, to each purchaser or his legal, financial or other representative(s) or both, the opportunity to ask questions of, and receive answers from, the issuer or seller, or any person acting on the issuer's or seller's behalf, concerning the terms and conditions of the offering and to obtain any additional

information, to the extent that the issuer or seller possesses such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information obtained. Audited, unaudited or other financial statements must be sworn to with a statement from a responsible representative of the issuer as follows: "To the best of my knowledge and belief these financial statements and supporting schedules or documents of the issuer are true, correct and fairly represent the financial position of the issuer."

- (2) **ACCREDITED INVESTOR.** See definition of "Accredited Investor" found in SEC Rule 501 of Regulation D, promulgated under the Securities Act of 1933.
- (3) **ACT.** The Arkansas Securities Act, as amended, codified at Ark. Code Ann. Sections 23-42-101 through 509.
- (4) **ADVISORY AFFILIATE.** A person that directly or indirectly controls or is controlled by a person who either is registered as an investment adviser or has filed an application to become registered as an investment adviser, including any current employee except one performing only clerical, administrative, support or similar functions.
- (5) **AFFILIATE.** The term "affiliate" of or "affiliated" with a person means a person that directly or indirectly through one or more intermediaries' controls, or is controlled by, or is under common control with such person.
- (6) **APA.** The Arkansas Administrative Procedures Act ("APA"), as amended, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-217.
- (7) **APPLICANT.** A person who submits an application for registration of securities, for an exemption procedure or for registration as a broker-dealer, broker-dealer agent, agent of the issuer, investment adviser, or investment adviser representative who files an application for an order of the Commissioner.
- (8) **APPLICATION.** The form prescribed by the Commissioner for filing in connection with the registration of securities, for an exemption procedure and as a broker-dealer, broker-dealer agent, agent of the issuer, investment adviser, or investment adviser representative, including all amendments, papers, documents and exhibits incidental thereto.
- (9) **CLIENT.** For purposes of Sections 23-42-102(8)(E)(ii) of the Act and Rule 102.01(35), the following shall be deemed a single client:

- (A) A natural person, and:
 - (i) Any minor child of the natural person;
 - (ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;
 - (iii) All accounts of which the natural person and/or the persons referred to in this subsection (A) are the only primary beneficiaries; and
 - (iv) All trusts of which the natural person and/or the persons referred to in this subsection (A) are the only primary beneficiaries.
 - (B) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in Rule 102.01(9)(A)(iv) above), or other legal organization that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries, or any two or more legal organizations that have identical owners, provided however, an owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization, and a limited partnership shall be deemed a client of any general partner or other person acting as investment adviser to the partnership.
- (10) **COMMISSIONER.** The Arkansas Securities Commissioner.
- (11) **CONTROL.** The power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 percent or more of the voting securities of a person or is entitled to 25 percent or more of the profits of a person is presumed to control that person.
- (12) **CONTROL AFFILIATE.** Any person that directly or indirectly controls, is controlled by or under common control with an applicant or registrant, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, performs no executive duties or has no senior policy making authority.
- (13) **CRD.** The Central Registration Depository ~~maintained~~ operated by FINRA.

- (14) **CUSTOMER.** The person being charged a commission or fee, being rendered a service, being sold a security, being solicited to sell a security, or receiving investment advice. However, the term "customer" shall not include the broker-dealer or investment adviser charging the commission or fee, offering the services, or rendering the investment advice.
- (15) **DEPARTMENT.** The Arkansas Securities Department.
- (16) **DISCRETION OR DISCRETIONARY AUTHORITY.** ~~As used in Section 23-42-305(a) of the Act,~~ Solely for purposes of determining an investment adviser's surety bond obligation under Rule 305.01(b), the term "discretionary authority" ~~or "discretion"~~ means the authority that an investment adviser possesses by virtue of a limited power of attorney or other grant of authority enabling such investment adviser to determine what securities or other property shall be purchased or sold by or for an account, or make decisions as to what securities or other property shall be purchased or sold by or for an account even though some other person may have responsibility for such investment decisions.

The term "discretionary authority" shall not include the authority of an investment adviser to direct purchases or sales of securities in an account provided the following conditions are met:

- (A) The limited power of attorney or other grant of authority precludes the possibility of disbursements of cash or securities from the account to the investment adviser other than for the payment of advisory fees due to the investment adviser;
- (B) The investment adviser receives no compensation or pecuniary benefit, either directly or indirectly, on account of or as a result of any purchase or sale in the account, other than the compensation which he may receive for investment advice or for purely administrative services under the Employee Retirement Income Security Act of 1974;
- (C) The investment adviser has no direct or indirect ownership interest in the broker-dealer or affiliation with the agent effecting the purchase or sale; or
- (D) The purchase or sale does not involve a security in which the investment adviser has an interest unless such security is:
 - (i) A "covered security" in Section 18(b)(1) of the Securities Act of 1933; ~~that the advisor in no way controls;~~

- (ii) A security which has been determined by rule or order of the Commissioner to be exempt because it is sold on an exchange (or tier or segment thereof) which has listing standards substantially similar to the listing standards of the exchanges set forth in subparagraph (D)(i) of this subsection.

The Commissioner may upon written request and for good cause shown, waive any of the conditions set forth above.

(17) ENGAGED IN THE BUSINESS OF EFFECTING TRANSACTIONS IN SECURITIES. As used in Section 23-42-102(2) of the Act, the term "engaged in the business of effecting transactions in securities," includes any person who holds himself out as being able to effect transactions in securities for the accounts of others or for his or her own account regardless of whether any transactions have actually been effected. The term shall not include a business broker who, as part of the facilitation of the sale of business, including securities of the business, takes a fee provided all of the following conditions are met:

- (A) The business broker has a limited role in negotiations between the purchaser and the seller;
- (B) The businesses represented by the business broker are going concerns and are not "shell" organizations;
- (C) Only assets are advertised or otherwise offered for sale by the business broker;
- (D) Transactions effected by means of securities convey all of the business' equity to a single purchaser or group of purchasers formed without the assistance of the business broker;
- (E) The business broker does not advise the parties whether to issue securities or assess the value of any securities sold;
- (F) The business broker's compensation does not vary according to the form of conveyance the parties agree to; and
- (G) The business broker does not assist purchasers in obtaining financing other than to provide to a party a list of potential lenders.

(18) EXEMPTED OR EXEMPTION. Securities or transactions meeting the requirements of Section 23-42-503 or Section 23-42-504 of the Act, and the applicable Rules, are exempt from the registration requirements contained in Section 23-42-501 and Section 23-42-502 of the Act. Such securities or

transactions are not exempted from any other provisions of the Act or applicable Rules.

- (19) **FINRA.** The Financial Industry Regulatory Authority.
- (20) **IARD.** The Investment Adviser Registration Depository operated by FINRA.
- (21) **INDICATIONS OF INTEREST.** Communications and/or actions on the part of a customer, or the solicitation thereof, that give rise to the inference that such customer may purchase the yet-to-be issued securities.
- (22) **INVESTMENT INTENT.** Securities purchased under the Act and these Rules with "investment intent" cannot be purchased with a view to, or for resale in connection with any sale or hypothecation. Securities purchased with investment intent cannot be disposed of unless the securities are registered under the Act or, in the opinion of counsel for the issuer, an exemption from the registration requirements of the Act is available. As a result, the purchaser of these securities must be prepared to bear the economic risk of the investment for an indefinite period of time and have no need of liquidity of the investment. Where securities are purchased under the Act for investment, investment intent shall be presumed if the purchaser retains such securities for ~~two~~ one years from the date of consummation of the sale. However, any disposition of the securities within ~~two~~ one years of the date of purchase, in the absence of an unforeseeable change of circumstances, shall create a presumption that the person did not purchase the securities with investment intent. Securities purchased with investment intent are deemed "restricted" securities and must bear an appropriate legend restricting retransfer.
- (23) **LIFE SETTLEMENT CONTRACT.** An agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life insurance policy or certificate. Life settlement contract does not include:
 - (A) The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy or certificate of insurance by the insured to the life settlement provider pursuant to the Life Settlement Act, Ark. Code Ann. Sections 23-81-801 through 23-81-818;
 - (B) The assignment, transfer, sale, devise or bequest of a life insurance policy, for any value less than the expected death benefit, by the insured to a friend or family member who enters into no more than one such agreement in a calendar year;

- (C) An assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union or other licensed lending institution as collateral for a loan; or
 - (D) The exercise of accelerated benefits pursuant to the terms of the Arkansas Insurance Code and of the life insurance policy.
- (24) **MSRB.** Municipal Securities Rulemaking Board.
 - (25) **NASAA.** North American Securities Administrators Association, Inc.
 - (26) **NOTICE FILING.** A filing made pursuant to Section 23-42-301(c)(1) of the Act in the case of investment advisers, and Section 23-42-509 of the Act in the case of persons issuing or offering securities.
 - (27) **OFFER OR OFFER TO SELL.** For the purposes of Sections 23-42-501 and 23-42-502 of the Act, the term "offer" or "offer to sell" as defined in Section 23-42-102(13)(A)(ii) of the Act shall not include negotiations, agreements or similar communications with respect to a proposed reorganization provided such negotiations, agreements or similar communications are incidental to the formulation of a proposal of a reorganization and, except for the merger of a subsidiary entity into its parent, a vote of approval and consent of security holders is required to effectuate the proposed transactions.
 - (28) **PARENT.** An affiliate controlling another person.
 - (29) **PLACE OF BUSINESS.** The term "place of business" means:
 - (A) Any office or other location at or from which an investment adviser, investment adviser representative, broker-dealer, or agent regularly provides investment advisory or broker-dealer services, solicits, meets with, or otherwise communicates with clients; and
 - (B) Any other location that is held out to the general public as a location at which the investment adviser, investment adviser representative, broker-dealer, or agent provides investment advisory or broker-dealer services, solicits, meets with, or otherwise communicates with clients.
 - (30) **PRINCIPAL PLACE OF BUSINESS.** The executive office of a registrant from which the officers, partners, or managers of the registrant direct, control, and coordinate the activities of the registrant.
 - (31) **PROMOTER.** A person who, acting alone or in conjunction with others, takes the initiative in founding, organizing or incorporating the business or enterprise.

A promoter does not include a lawyer or accountant acting as an independent contractor.

- (32) **PROOF OF EXEMPTION.** "Proof of Exemption" as used in Sections 23-42-503(d) and 23-42-504(b) of the Act shall mean the filing made by an applicant, together with any supporting documents and written statements of the applicant as set forth in the appropriate rule, whereby the applicant describes his expected conduct during the exemption process and demonstrates his disclosure and antifraud responsibilities required in order to qualify for the exemption. A proof of exemption is not in and of itself an exemption. It is merely the filing by which an applicant requests the Commissioner not to withdraw the availability of use of the exemption based on the applicant's demonstration of his recognition of the technical requirements necessary to qualify.
- (33) **PUBLIC ADVERTISING.** Public advertising shall mean any form of general solicitation, offer, invitation to invest, or other writing that could be easily understood to be designed to attract investors, general advertising or any other communication directed to persons whose background is unknown to the communicant, including but not limited to, the following:
- (A) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar medium or broadcast over television, radio or other electronic media;
 - (B) Any seminar or meeting or invitation to or promotion of such meeting or seminar;
 - (C) Any letter, circular, handbill, notice or other written communication;
 - (D) Any solicitation by telephone or other electronic media; or
 - (E) A solicitation that is maintained on or disseminated by way of any webpage, site on the Internet, or other electronic posting.
- (34) **PURCHASER.** For purposes of computing the number of purchasers, offerees, investors, or subscribers, a husband and wife who purchase or contemplate purchasing in the joint names of both spouses shall be deemed to be one offer or sale.
- (35) **REGISTRANT.** An applicant for whom a registration has been declared effective.
- (36) **REPRESENTATIVE OF AN INVESTMENT ADVISER REGISTERED WITH THE SEC.** The term "representative of an investment adviser registered with the SEC" shall mean a supervised person

of the investment adviser more than ten percent of whose clients are natural persons, but does not include a supervised person who:

- (A) Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or
- (B) Provides only investment advisory services by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

For purposes of this subsection, natural persons who have at least five hundred thousand dollars (\$500,000.00) under management with the investment adviser immediately after entering into the investment advisory contract, and natural persons who immediately prior to entering into the investment advisory contract the investment adviser reasonably believes to have a net worth (together with assets held jointly with a spouse) of more than one million dollars (\$1,000,000.00) at the time the investment advisory contract is entered into shall not be included as clients of the investment adviser.

- (37) **RESTRICTED SECURITY.** Restricted securities shall mean those securities that require purchase with investment intent and those securities that have additional transfer restrictions, such as shareholder agreements. Each restricted security should bear the appropriate restrictive legend, including the NASAA Uniform Disclosure Guidelines for Cover Legends. The following reflects retransfer restriction as to securities law:

"RESTRICTION ON RETRANSFER"

"The security represented by this certificate has been executed pursuant to an exemption from registration under the Securities Act of 1933 and the Arkansas Securities Act in reliance upon the representation of the holder hereof that the same is acquired for investment purposes. This stock may accordingly not be resold or otherwise transferred or conveyed in the absence of registration of the same pursuant to the applicable securities laws or unless an opinion of counsel satisfactory to the issuer is first obtained that such is not then necessary. Any transfer contrary hereto is void."

- (38) **REORGANIZATION.** The term "reorganization" shall mean any merger, consolidation, reclassification of securities, sale of assets in consideration of the issuance of securities of another person, exchange of outstanding securities for the issuance of securities or assets of another person, or other similar reorganization, pursuant to applicable statutory provisions of the jurisdiction under which such corporation or other person is organized, or pursuant to the provisions of its Articles of Incorporation or similar controlling instrument, which the approval or consent of the security holders is required to effectuate, or any merger of a

subsidiary entity into its parent where such vote, approval or consent is not required by the applicable statute.

- (39) **RULES.** The Rules of the Arkansas Securities Commissioner.
- (40) **SEC.** The Securities and Exchange Commission.
- (41) **SPONSOR.** A person or a member of the immediate family of a person who acts as a general partner, manager or management company of a program including an affiliate of, or a person associated with, a sponsor, except as otherwise provided.
- (42) **SUBSIDIARY.** An affiliate controlled by another person.
- (43) **SUPERVISED PERSON.** With regard to investment advisers registered with the SEC, the term "supervised person" means any partner, officer, director, or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.
- (44) **STAFF.** The Staff of the Arkansas Securities Department.
- (45) **TRANSACTION BUSINESS.** As used in Sections 23-42-301(a) and 23-42-301(c) of the Act, the term "transact business" includes representing a person or entity as being able to effect transactions in securities for the account of others or for his or her own account regardless of whether any transactions have actually been effected, or being able to serve as an investment adviser regardless of whether any investment advice or service has actually been rendered. The term shall not include communications, postings, or distributions of information set forth on the Internet if each of the following conditions are met:
 - (A) The Internet communication contains a legend in which it is clearly stated that:
 - (i) The broker-dealer, investment adviser, broker-dealer agent, agent of the issuer, or investment adviser representative in question may only transact business in this state if first registered, or exempted from registration as a broker-dealer, investment adviser, broker-dealer agent, agent of the issuer, or investment adviser representative, whichever is applicable; and
 - (ii) Follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, broker-dealer agent, agent of the issuer, or investment adviser representative that involve either the effecting of or the attempt to effect transactions in securities, or the rendering of personalized investment advice for compensation or attempt to render such advice, as may be, will not be made absent

compliance with state broker-dealer, investment adviser, broker-dealer agent, agent of the issuer, or investment adviser representative requirements, or an applicable exemption;

- (B) The Internet communication contains a mechanism, including and without limitation, technical “firewalls” or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, the broker-dealer, investment adviser, agent of the issuer, broker-dealer agent, or investment adviser representative is first registered in this state or is exempt from registration under the Act. Nothing in this Rule 102.01(45) shall be construed to relieve a broker-dealer, investment adviser, broker-dealer agent, agent of the issuer, or investment adviser representative from any applicable securities registration requirements in this state;
- (C) The Internet communication does not involve either effecting or attempting to effect transactions in securities, or rendering of or attempting to render personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and
- (D) In the case of an agent or representative:
 - (i) The affiliation with the broker-dealer or investment adviser of the agent, or representative is prominently disclosed within the communication;
 - (ii) The broker-dealer or investment adviser with which the agent or representative is associated retains responsibility for reviewing and approving the content of any Internet communication by the agent or representative;
 - (iii) The broker-dealer or investment adviser with which the agent or representative is associated first authorizes the distribution of information on the particular products and services through the Internet communication; and
 - (iv) In disseminating information through the Internet communication, the agent or representative acts within the scope of the authority granted by the broker-dealer or investment adviser with which the agent or representative is associated.

(46) UNDERWRITER. The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or

indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or broker-dealer not in excess of the usual and customary distributors' or sellers' commission.

RULE 103 APPLICABILITY.

[RESERVED]

RULE 104 CRIMINAL PENALTIES.

[RESERVED]

RULE 105 PROSECUTION OF CRIMINAL OFFENSES.

[RESERVED]

RULE 106 CIVIL LIABILITY.

[RESERVED]

RULE 107 CONSENT TO SERVICE OF PROCESS.

[RESERVED]

RULE 108 RIGHTS AND REMEDIES CUMULATIVE.

[RESERVED]

RULE 109 WAIVER OF COMPLIANCE VOID.

[RESERVED]

RULE 110 FALSE OR MISLEADING STATEMENTS UNLAWFUL.

[RESERVED]

**CHAPTER 2
ADMINISTRATION**

**RULE 201 ADMINISTRATION BY SECURITIES COMMISSIONER -
CONFLICTS OF INTEREST.**

[RESERVED]

**RULE 202 DELEGATION OF AUTHORITY BY SECURITIES
COMMISSIONER.**

[RESERVED]

**RULE 203 CONFIDENTIALITY OF INFORMATION OR PROCEEDINGS -
GENERALLY.**

[RESERVED]

**RULE 204 RULES, FORMS, AND ORDERS OF SECURITIES
COMMISSIONER.**

204.01 GENERAL.

The following provisions apply to all applications, petitions, notice filings, amendments, reports, complaints, or other documents required under the Act, these Rules, or any order of the Commissioner:

- (A) FILING.** A document is deemed filed when it is received in the office of the Commissioner.
- (1) All communications and inquiries shall be addressed or delivered to: Arkansas Securities Commissioner, 201 East Markham, Suite 300, Little Rock, Arkansas 72201, Telephone (501) 324-9260.
 - (2) The Office of the Commissioner shall be open for business between the hours of 8:00 a.m. and 4:30 p.m. on weekdays, except for legally declared holidays.
 - (3) The original of each form or exhibit is required. Additional copies of certain documents may be requested or required by other provisions of the Act or Rules.
 - (4) When a document is required to be signed, such signature shall be an original signature of the person signing or if submitted electronically, the

signature shall be verified through a certification authority that shall verify for the Department that the electronic signature is authentic.

(B) FEES. Unless a filing is made electronically or as otherwise set forth specifically in these Rules, all fees must accompany the application, notice filing or supplemental amendment to which they pertain and are payable by check or money order to the Arkansas Securities Department. A filing shall be deemed incomplete until applicable fees are received. Copies of documents filed and recorded in the office of the Commissioner will be provided at a charge of ten cents per page. Certified copies will be provided at an additional charge of one dollar per document.

(C) FORMS. The following forms have been adopted for use.

(1) BROKER-DEALER REGISTRATION.

- (a) Uniform Application to Register for Broker-Dealer Registration (Form BD).
- (b) Uniform Application for Securities Industry Registration or Transfer (Form U4).
- (c) Uniform Termination Notice (Form U5).
- (d) Uniform Surety Bond (Form USB).
- (e) Designated Principal Form.
- (f) Designated Arkansas Principal Form (if applicable).
- (g) Notice of Withdrawal from Registration as Broker-Dealer (Form BDW).
- (h) Independent Contractor Acknowledgement Form.

(2) INVESTMENT ADVISER REGISTRATION.

- (a) Uniform Application for Investment Adviser Registration (Form ADV).
- (b) Uniform Surety Bond (Form USB)
- (c) Notice of Withdrawal from Registration as Investment Adviser (Form ADVW).
- (d) Independent Contractor Acknowledgement Form.

- (3) SECURITIES AGENT, AGENT OF AN ISSUER AND INVESTMENT ADVISER REPRESENTATIVE.
 - (a) Uniform Application for Securities Industry Registration (Form U4).
 - (b) Uniform Surety Bond (Form USB).
 - (c) Uniform Termination Notice (Form U5).
 - (d) Dual Registration Acknowledgement Form.
 - (e) Agent of the Issuer Renewal Registration Form.
- (4) SECURITIES REGISTRATION AND EXEMPTION.
 - (a) Uniform Application to Register Securities (Form U-1).
 - (b) Uniform Consent to Service of Process (Form U-2).
 - (c) Uniform Form of Corporate Resolution (Form U-2A).
 - (d) Small Corporate Offering Registration (Form U-7)
 - (e) Notice of Sales of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption (Form D).
- (5) NOTICE FILINGS.
 - (a) Uniform Investment Company Notice Filing (Form NF).
 - (b) Uniform Application for Investment Adviser Registration (Form ADV).

RULE 205 INVESTIGATIONS.

[RESERVED]

**RULE 206 RECORDS OF SECURITIES COMMISSIONER –
GENERALLY - INTERPRETIVE OPINIONS.**

**206.01 GUIDELINES FOR INTERPRETIVE OPINIONS AND
NO-ACTION LETTERS.**

- (A) **GENERAL.** In most circumstances persons requesting informal advice from the Staff should submit a request for an interpretive opinion or no-action letter. In an interpretive opinion, the Staff provides its views on the

interpretation of a specific statute or rule in the context of an actual and narrow fact situation. A no-action letter is one in which the Staff indicates that it will not recommend enforcement action to the Commissioner if a proposed course of action described in the request occurs just as described in the request. In some instances, the Staff may indicate that it is unable to assure the requesting party that it will not recommend enforcement action and may allow the requesting party to withdraw the request. A no-action letter expresses the Staff's position on enforcement action only and does not represent any legal conclusion on the question presented. Requests for no-action letters or interpretive opinions should comply with the following:

- (1) Each request for no-action letter or an interpretive opinion shall be in writing. The requesting party must submit an original and one copy of each request.
- (2) The specific subsection of the particular statute to which the request pertains must be indicated in the request. Thus, for example, a letter requesting an interpretation of the Section 23-42-504(a)(9) exemption would be captioned "Section 23-42-504(a)(9) Exemption" and a letter requesting an interpretation of Rule 504.01(a)(9) under the Arkansas Securities Act would be captioned "Rule 504.01(a)(9)."
- (3) The request must contain the names of each person and entity involved in the underlying facts. Requests relating to unnamed persons or entities, or to hypothetical situations, will not be answered.
- (4) The request must be limited to the particular situation involving the problem at hand and should not attempt to include every possible type of situation which may arise in the future. The facts and representations must be specific, not general.
- (5) While it is essential that the request contain all of the facts necessary to reach a conclusion in the matter, the request should be concise and to the point.
- (6) The requesting party must indicate why he thinks a problem exists, his own opinion in the matter and the basis for such opinion. If the requesting party seeks confidential treatment, a separate letter requesting confidential treatment and stating the basis for confidential treatment must be submitted with the interpretive request. Confidential treatment will generally not be available unless necessary to protect bona fide trade secrets or unless clearly authorized by some other provision of law.
- (7) In responding to a properly submitted request for interpretive opinion or no-action letter, the Staff will use an endorsement to the incoming request. The Staff will state its position on a separate page attached to the

incoming request. Both the incoming letter and the Staff's endorsement response will be sent to the requesting party, will be made publicly available, and will be posted to the Department's website.

(B) LIMITATIONS. All forms of informal advice, including no-action letters and interpretive opinions, are subject to substantial limitations. These limitations include the following:

- (1) All informal advice is subject to reconsideration and is not precedent binding on the Commissioner. Informal advice sets forth the Staff's position only with respect to the particular facts posed by the particular requesting party and does not constitute an official expression of the Commissioner's views.
- (2) In responding to any request for informal advice, the advice given will be limited to and conditional upon the specific representations made to the Staff by the requesting party. The Staff's position will be based solely upon the facts and representations provided by the requesting party. These facts and representations must be specific rather than general. Any different facts, representations, or circumstances might require the Staff to reach a different conclusion.
- (3) All informal advice applies only to the requesting party. Persons in similar circumstances should not rely on previous no-action letters or interpretive opinions, but submit their own request for such informal advice.
- (4) All informal advice shall be limited to the specific law administered by the Department as stated in the Staff's response, and will not address the applicability of any other federal, state, or local law, rule, or regulation.
- (5) The Staff may decline to express any view on the application of law to a particular set of facts. There are several reasons why the Staff may feel it inappropriate in a particular instance to express an opinion. For example, (i) the Staff may be in no position to verify the facts and circumstances which are the basis of the request, (ii) the Staff may be concerned that its position may be misconstrued in somewhat different factual circumstances, and (iii) in some areas policy concerns dictate that the Staff may not express a view.

RULE 207 PUBLIC INSPECTION OF RECORDS-EXCEPTIONS.

[RESERVED]

RULE 208 COOPERATION WITH OTHER REGULATORY AGENCIES.

[RESERVED]

RULE 209 INJUNCTION, MANDAMUS, OR OTHER ANCILLARY RELIEF.

[RESERVED]

RULE 210 JUDICIAL REVIEW.

[RESERVED]

RULE 211 DISPOSITION OF FEES.

[RESERVED]

**RULE 212 REGISTRATION OR AVAILABILITY OF EXEMPTION NOT
CONSTRUED AS APPROVAL BY COMMISSIONER -
INCONSISTENT REPRESENTATION.**

[RESERVED]

RULE 213 DISPOSITION OF FINES-INVESTOR EDUCATION FUND.

213.01 INVESTOR EDUCATION PROGRAM.

(A) GENERAL. Utilizing the Investor Education Fund described in Section 23-42-213 of the Act, the Commissioner may administer an investor education program for the citizens of the State of Arkansas. The purpose of such program will be to inform and educate the public regarding investments in securities in order to help investors and potential investors:

- (1) Evaluate their investment decisions;
- (2) Protect themselves from unfair, inequitable and fraudulent offerings;
- (3) Choose their broker-dealers, agents, and investment advisers more carefully;
- (4) Be alert for false or misleading advertising or other harmful practices;
and
- (5) Know their rights as investors.

(B) GRANT PROGRAM. Utilizing the Investor Education Fund described in Section 23-42-213 of the Act, the Commissioner may administer a grant

program to solicit grant proposals from public schools and non-profit organizations (Internal Revenue Code Section 501(c)(3), tax-exempt organizations) for the purpose of providing securities/investment education to teachers and students about the securities industry, securities markets, and investment decision.

- (1) Eligible applicants are public schools and non-profit groups that provide investment education to Arkansas students in grades five through twelve.
- (2) The Commissioner may establish the number of grant awards available as well as the amount of monies available for award through the grant program.
- (3) Grant funds awarded may be used to procure any appropriate educational, resource, software materials and equipment consistent with the purpose of the grant program, this Rule and Section 23-42-213 of the Act.
- (4) The Commissioner may establish a grant proposal process by which eligible applicants may submit an application for a grant award.
- (5) A grant award by the Commissioner will be based upon the merit of the grant proposal considering:
 - (a) Educational need for the project;
 - (b) Learning objectives to be accomplished by the project;
 - (c) Specific description of the project;
 - (d) Number of students educated;
 - (e) Description of measurable project outcomes; and
 - (f) Other school resources dedicated to the project.

CHAPTER 3
BROKER-DEALERS AND INVESTMENT ADVISERS

RULE 301 REGISTRATION REQUIRED.

[RESERVED]

RULE 302 REGISTRATION PROCEDURE.

302.01 BROKER-DEALER OR AGENT.

(A) GENERAL PROVISIONS. The following are general eligibility requirements.

- (1) Each non-resident broker-dealer must be registered as a broker-dealer or an agent, or exempt or excepted from registration, or qualified to engage in business as a broker-dealer or agent in the state of his primary residence or, in the case of broker-dealers that are not natural persons, in the state in which such broker-dealer has its principal place of business.
- (2) Each partner or officer of a registered broker-dealer or issuer may act as an agent only if he is registered as an agent as required by the Act.
- (3) Except upon approval of the Commissioner, an agent may not be registered with more than one broker-dealer, investment adviser, issuer, or any combination thereof, unless the business entities are affiliated. An agreement of joint supervision from all affiliated firms shall be submitted to the Commissioner for approval.
- (4) Applications which have been on file for a period of one hundred eighty days following notification of a deficiency that remain deficient may be deemed incomplete and automatically withdrawn.
- (5) At least one employee of an issuer or broker-dealer who is qualified, who shall have direct supervision over the purchase and sale of securities in Arkansas, shall be:
 - (a) Registered as an agent of the issuer;
 - (b) Registered as an agent and designated as a principal of the broker-dealer; or
 - (c) An Arkansas resident and is qualified as a principal with the proper examinations, when the broker-dealer has a branch office located in Arkansas.

- (6) Pursuant to Sections 23-42-208 and 23-42-302 of the Act, the Commissioner designates the CRD to receive and store filings and collect related fees from broker-dealers and broker-dealer agents on behalf of the Commissioner.

(B) APPLICATION. Each filing for initial and renewal registration shall be complete only if it contains the information set forth in Sections 23-42-302 through 23-42-305 of the Act in the manner prescribed by the Commissioner. The requirements listed below are subject to change pursuant to Section 23-42-208 of the Act.

(1) BROKER-DEALER APPLICATIONS.

An applicant for initial broker-dealer registration shall:

- (a) Submit to the CRD a completed Uniform Application for Broker-Dealer Registration (Form BD), and branch office registration (Form BR) or such other forms established for the CRD, designating Arkansas as a state in which the applicant requests to be licensed, along with the fee set forth in Section 23-42-304 of the Act and any other fee required by FINRA; and
- (b) Submit to the Commissioner:
 - (i) Most recent audited financial statement.
 - (ii) Proof of bonding coverage as prescribed by FINRA;
 - (iii) An applicant acknowledges responsibility for registered agent employees and Independent Contractors via the Independent Contractor Acknowledgement Form;
 - (iv) Principal Designation Letter and Arkansas Resident Principal Designation Letter, if applicable; and
 - (v) Any other information deemed necessary by the Commissioner to determine whether the applicant should be licensed.

(2) AGENT APPLICATIONS.

- (a) Initial agent applications for a broker-dealer registered or to be registered with FINRA must be submitted directly to the CRD system on a Uniform Application for Securities Industry Registration or Transfer (Form U4) along with the initial agent

registration fee as set forth in Section 23-42-304 of the Act and any other fee required by FINRA.

- (b) Initial agent applications for an agent of an issuer must be submitted directly to the Commissioner on a Uniform Application for Securities Industry Registration or Transfer (Form U4) along with the initial agent registration fee as set forth in Section 23-42-304 of the Act, a photocopy of processed Federal Bureau of Investigation fingerprint card, surety bond in the amount of twenty-five thousand dollars (\$25,000.00), and attachments as required by the instructions on the Uniform Application for Securities Industry Registration or Transfer (Form U4).
- (c) An application for registration as an agent of a broker-dealer shall not be complete until the applicant has furnished, in addition to the requirements set forth in Rule 302.01(B)(2), any other information not specifically required by the Act or these Rules that the Commissioner may reasonably require, including, but not limited to, copies of any litigation, regulatory proceedings, and customer complaints.

(3) **BROKER-DEALER RENEWAL APPLICATIONS.**

An applicant for the renewal of a registration as a broker-dealer shall, prior to expiration of its current registration, submit to the CRD all appropriate amendments and fees. The applicant shall also submit to the Commissioner proof of continued bonding coverage.

(4) **AGENT RENEWAL APPLICATIONS.**

- (a) Renewal registration of agents, including the principal, of a broker-dealer shall be submitted to the CRD along with the fee set forth in Section 23-42-304 of the Act and any other fee required by FINRA prior to expiration of registration.
- (b) No documents or fees need to be filed directly with the Commissioner; however, the Commissioner may request other information not specifically required by the Act or these Rules, including, but not limited to, copies of any litigation, regulatory proceedings, and customer complaints.
- (c) Renewal registration of agents of an issuer shall be submitted to the Commissioner prior to the expiration of registration and shall include the following:

- (i) A completed agent renewal application (supplied by the Department);
 - (ii) The agent renewal registration fee as set forth in Section 23-42-304 of the Act;
 - (iii) Proof of continued bond coverage for agents of the issuer who submitted individual surety bonds as a part of their application for registration;
 - (iv) Any amendments to the documents on file; and
 - (v) Any other information not specifically required by the Act or these Rules that the Commissioner may reasonably require, including, but not limited to, copies of any litigation, regulatory proceedings, and customer complaints.
- (5) Each applicant for registration as an agent of a broker-dealer or issuer shall, as a part of his application, be properly fingerprinted.
 - (a) Any applicant subject to the fingerprinting requirements of the Securities Exchange Act of 1934 shall submit to the CRD system a fingerprint card along with a fingerprint record transmittal form (both supplied by the CRD) which will be processed by the Federal Bureau of Investigation by the CRD system. The applicant may be registered after submission of the fingerprint card and completion of all other registration requirements. Notification of the results of the processed card will be made available to the Department via the CRD system.
 - (b) Any agent of the issuer shall follow the same procedures outlined above except that the applicant shall send the appropriate fee charged by the CRD system and a letter rather than the transmittal form to the CRD system requesting that the fingerprint card be processed for the purposes of registration in Arkansas. Upon submission of the fingerprint card and completion of all other registration requirements, the applicant may be registered.
- (6) Additional exhibits or information not specifically required by such application but essential to a full presentation of all material facts relating to the applicant's qualifications shall be furnished and properly identified.
- (C) **EXAMINATION.** Unless specifically exempt or waived as hereinafter provided, examination(s) in the form and content prescribed or approved by the Commissioner must be taken and passed by each applicant in order to test their

knowledge of the broker-dealer or issuer business, the Act and the Rules relating thereto before such applicant will be considered eligible for registration.

- (1) An individual applying to be registered as an agent of a broker-dealer, principal of a broker-dealer, or agent of the issuer under the Act shall provide the Commissioner with proof of knowledge of the broker-dealer business and the Act by obtaining a passing score on the required examination(s) within the two year period immediately preceding the filing date of the application. Applicants shall meet the following minimum standards to qualify:
 - (a) Agent. Agents must pass an appropriate general knowledge examination and the appropriate state law examination.
 - (b) Principal. Agents designated as a principal of a broker-dealer must pass the appropriate general knowledge examination required in subsection (a) above as a prerequisite and must pass the CRD principal examination (S24) or other limited principal examination if the firm is limited in its scope of business and provides verification of same to the Commissioner.
 - (c) Agent of the Issuer. Agents of the Issuer must pass an appropriate general knowledge examination and the appropriate state law examination.
 - (2) Applicants successfully completing a limited knowledge examination will only be eligible for registration to effect transactions in those securities that were covered by the limited examination.
 - (3) Any individual who has been registered as a general securities agent, or general securities principal in any state, commonwealth, territory, district, or province in the United States or Canada within the two years immediately preceding the filing of a completed application and who has at any time in the past met the requirements of subsection (C)(1) of this Rule shall not be required to repeat the examinations in order to become registered as an agent of a broker-dealer, principal of a broker-dealer, or agent of the issuer.
 - (4) Solely in those cases where circumstances warrant because of the limited time, amount, or nature of the issue or transaction involved, the Commissioner may, upon substantiation by the applicant, waive any or all of the examination requirements set forth above.
- (D) **REGISTRATION REQUIREMENTS.** Upon completion of the application, compliance with the examination(s) requirement, payment of the fees and acceptance by the Commissioner, initial registration will become effective.

- (1) For agents and broker-dealers filing a completed application as set forth in Rule 302.01(B), the Commissioner will either accept such application or notify the applicant of the matters still to be resolved.
- (2) Notification by the CRD will be given to each broker-dealer evidencing the broker-dealer and each agent's registration status.
- (3) All amendments shall be filed with CRD in such manner as CRD requires. Changes necessitating a filing shall include, but may not be limited to, the following:
 - (a) Change in firm name, ownership, management or control of a broker-dealer, or a change in any of its partners, officers or persons in similar positions, or its business address, or the creation or termination of a branch office in Arkansas.
 - (b) Change in type of entity, general plan or character of a broker-dealer's business, method of operation of type of securities in which the registrant is dealing or trading.
 - (c) Insolvency, dissolution or liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum capital or bond requirements hereinabove provided.
 - (d) The filing of a criminal charge or civil action against a registrant, or a partner or officer, in which an alleged violation of a securities law, threats of violence against any person, dishonesty, wrongful taking of any property or any manner of fraud is involved, and the result of any hearing, proceeding, or action in such matter, as well as any subsequent action taken on appeal by any reviewing agency or court.
 - (e) The filing of a complaint or the commencement of a proceeding by an administrative agency, regulatory agency, self-regulatory agency, or court, or a written notice of intention to do so, to consider whether to deny, suspend or revoke a registration, impose a fine or other penalty upon the registration, or to enjoin the registrant from engaging in or continuing any conduct or practice in the securities business, the results of such hearing or proceeding any subsequent actions taken by any reviewing agency or court.
 - (f) The registrant shall be deemed to have complied with immediate notification pursuant to this subsection if such information has been filed with CRD as soon as possible but in no event more than

thirty calendar days after the registrant has knowledge of the circumstances requiring such notification.

- (4) Any broker-dealer registered under the Act shall give timely notice to each agent registered with such broker-dealer of the results of any hearing or proceeding referred to in Rule 302.01(D)(3) to the extent the agent is required to disclose such matters on his application(s).

(E) EXPIRATION AND RENEWAL OF REGISTRATION. All broker-dealer and agent registrations hereunder shall automatically expire on December 31 of each year without notification by the Commissioner, unless such registration has been properly renewed, or is withdrawn, terminated or cancelled.

- (1) See Rules 302.01(B)(3) and 302.01(B)(4) for renewal procedures.
- (2) Where registrations are permitted to expire without the filing of a renewal therefore, a subsequent application shall be considered in all respects as an original application unless an extension has been requested and granted in writing by the Commissioner prior to expiration.
- (3) Uniform Termination Notice (Form U5) must be used to report termination of an agent. If notification of termination on Uniform Termination Notice (Form U5) has not been received and processed after termination of a connection with a broker-dealer and Uniform Application for Securities Industry Registration or Transfer (Form U4) for registration with another broker-dealer has been received and processed the Commissioner shall consider such application in accordance with Section 23-42-301(b) of the Act. This does not relieve the broker-dealer from the requirement to file a Uniform Termination Notice (Form U5) within ten days after an agent's termination.
- (4) Termination of a broker-dealer's registration for any reason shall automatically constitute a termination of all agents' registrations thereunder.
- (5) The registration of a broker-dealer who ceases to have a registered principal and fails to appoint a qualified individual as a registered principal within sixty days from the date it ceased to have a registered principal may have its registration suspended or terminated. No offers or sales of securities may be made to residents of Arkansas during this period of suspension or termination.

(F) FINANCIAL REQUIREMENTS. Audited financial statements as required hereunder and computation of net capital and aggregate indebtedness (as hereinafter defined), unless otherwise permitted, shall be prepared by an independent certified public accountant in accordance with generally accepted

accounting principles and practices applied on a consistent basis accompanied by an opinion acceptable to the Department.

- (1) An applicant for initial broker-dealer's registration must submit audited financial statements for the most recently ended fiscal year, originally signed or authenticated, if the applicant has been in existence for twelve months or more, or most recent unaudited financial statement certified by the president, chief financial officer, or similar executive officer, as correct to the best of his or her knowledge if the applicant has been in existence less than twelve months and no audited financial statement has been prepared within thirty days of filing.
- (2) Annual Reports. Every broker-dealer currently registered must file with the Commissioner annual audited financial statements accompanied by an opinion acceptable to the Commissioner. The annual audited financial statements will be due not later than ninety days after the close of the fiscal year unless permission to file at some other date is granted by the Commissioner in advance of the date for filing the report.
- (3) All financial statements filed with the Commissioner as part of a registration or annual filing requirement when filed shall be public, except that if the balance sheet is in a format which is separate from the remainder of the audited financial statements and is identified as confidential, then it will be so treated.

~~Financial statements filed shall be the original, prepared and authenticated by an accountant.~~

302.02 INVESTMENT ADVISER.

(A) GENERAL PROVISIONS.

- (1) Each non-resident investment adviser and representative must be registered, exempt, excepted from registration, or qualified to engage in business as an investment adviser or representative in the state of his primary residence, or in the case of investment advisers that are not natural persons, in the state in which such investment adviser has its principal place of business. Each person not required to register with the Commissioner but required to make a notice filing pursuant to Section 23-42-301(c)(1) of the Act must be registered as an investment adviser with the SEC.
- (2) Pursuant to Sections 23-42-208 and 23-42-302 of the Act, the Commissioner designates the IARD to receive and store filings and collect related fees from investment advisers and their representatives on behalf of the Commissioner.

- (3) Except upon approval of the Commissioner, a representative may not be registered with more than one investment adviser, broker-dealer, issuer, or any combination thereof, unless the business entities are affiliated. An agreement of joint supervision from all affiliated firms shall be submitted to the Commissioner for approval.
- (4) Each filing for initial or renewal registration shall be complete only if it contains the information set forth in Sections 23-42-302 through 23-42-305 of the Act and corresponding Rules in the manner prescribed by the Commissioner. All information submitted in or accompanying an application must be complete and current as of the date of filing. If any of the information becomes inaccurate or incomplete for any reason prior to registration, amended information shall be filed as soon as practicable, but in any event, within thirty days from the date on which the applicant knew or should have known of the inaccuracy or change. Any application that becomes inaccurate or incomplete prior to registration will be deemed to be incomplete until such time as the inaccuracy or change is corrected.
- (5) Failure to correct an application deficiency for one hundred eighty or more days subsequent to notification of the deficiency may result in an automatic withdrawal of the application by the Commissioner.

(B) APPLICATION FOR INVESTMENT ADVISER REGISTRATION.

- (1) **INITIAL APPLICATIONS.** The application for initial registration as an investment adviser pursuant to Section 23-42-302(a) of the Act shall be made by completing the Uniform Application for Investment Adviser Registration (Form ADV) in accordance with the form instructions and by filing Part I and Part II of the Uniform Application for Investment Adviser Registration (Form ADV) with the IARD, along with the fee as set forth in Section 23-42-304(a) of the Act and by submitting directly to the Commissioner the following:
 - (a) Such financial statements as set forth in Rule 302.02(H);
 - (b) A corporate surety bond of fifty thousand dollars (\$50,000.00) covering the applicant and each representative if the applicant holds any customer's funds or has discretionary authority over any customer's account. However, no surety bond is required if an applicant maintains its principal place of business in a state other than Arkansas and is:
 - (i) Registered or licensed as an investment adviser in such state; and

- (ii) Is in compliance with the applicable bonding requirements of such state. In such event the applicant shall furnish, in lieu of a corporate surety bond, proof of such registration or license and a copy of the bond or other evidence exhibiting compliance with such other state's bonding requirements.
 - (c) Copies of investment advisory contracts to be used by the investment adviser. Investment advisory contracts must contain customer investment objectives in accordance with Rule 306.02(B)(10);
 - (d) An executed Consent to Service of Process in a form acceptable to the Commissioner (other than applicants with a place of business in Arkansas as provided in Section 23-42-107(a) of the Act);
 - (e) Copies of brochures to be used by the investment adviser as set forth in Rule 302.02(I), if different from Form ADV Part II;
 - (f) Any other information not specifically required by the Act or these Rules that the Commissioner may reasonably require, including, but not limited to, copies of orders, pleadings, or documents relating to any past or present litigation, regulatory proceedings, and customer complaints.
- (2) **ANNUAL RENEWAL.** The application for annual renewal registration as an investment adviser shall be accomplished by filing a renewal application in a form acceptable to the Commissioner with the IARD, along with the fee as set forth in Section 23-42-304(a) of the Act.
- (3) **UPDATES AND AMENDMENTS.**
- (a) An investment adviser must file with IARD, in accordance with the instructions in the Uniform Application for Investment Adviser Registration (Form ADV), any amendments to Part I and Part II of the Uniform Application for Investment Adviser Registration (Form ADV);
 - (b) An investment adviser must file directly with the Commissioner any amendments to its corporate surety bond, investment advisory contracts, brochure if different from Uniform Application for Investment Adviser Registration (Form ADV), Part II, and financial statements as set forth in Rule 302.02(H) below;
 - (c) An amendment will be considered to be filed promptly if the amendment is filed within thirty days of the event that requires the filing of the amendment;

- (4) **COMPLETION OF FILING.** An application for initial or renewal registration is not considered filed for purposes of Section 23-42-302 (a) of the Act until the required fee and Part I and Part II of Uniform Application for Investment Adviser Registration (Form ADV) are received and accepted by the IARD and all other required submissions have been received and accepted by the Commissioner.

(C) APPLICATION FOR INVESTMENT ADVISER REPRESENTATIVE REGISTRATION.

- (1) **INITIAL APPLICATIONS.** The application for initial registration as an investment adviser representative pursuant to Section 23-42-302(a) of the Act shall be made by completing Uniform Application for Securities Industry Registration or Transfer (Form U4) in accordance with the form instructions and by filing the Uniform Application for Securities Industry Registration or Transfer (Form U4) with the IARD. The application for initial registration shall also include the following:
- (a) The fee required by Section 23-42-304 of the Act;
 - (b) Proof of compliance by the investment adviser representative with the examination requirements of Rule 302.02(G); and
 - (c) Any additional exhibits or information not specifically required by these Rules but essential to a full presentation of all material facts relating to an applicant's qualifications or registration.
- (2) **ANNUAL RENEWAL.** The application for annual renewal of registration for a registered representative shall be filed with the IARD. The application for annual renewal of registration shall include the fee required by Section 23-42-304 of the Act.
- (3) **UPDATES AND AMENDMENTS.** The registered representative is under a continuing obligation to update information required by the Uniform Application for Securities Industry Registration or Transfer (Form U4) as changes occur. Any amendments to the representative's Uniform Application for Securities Industry Registration or Transfer (Form U4) must be filed promptly with the IARD. An amendment will be considered promptly filed if received by the IARD within thirty days of the event that requires the filing of the amendment. Proof of continued bond coverage for a registered representative must be provided to the Commissioner if submitted by the individual as a part of their initial application for registration.

- (4) **COMPLETION OF FILING.** An application for initial or renewal registration is not considered filed for purposes of Section 23-42-302(a) until the required fee and all required submissions have been received and accepted by IARD and all other required submissions have been received and accepted by the Commissioner.

(D) ACCEPTANCE OF REGISTRATION.

- (1) Promptly upon the filing of an application for registration the Commissioner will either accept such application or notify the applicant of any information, documents, or other matters necessary to complete the application.
- (2) The date of effectiveness of registration shall be governed by Section 23-42-302(f) of the Act.
- (3) Notification of the effectiveness of registration or of any matters set forth in paragraph (D)(1) of this subsection shall be given to an applicant by IARD or CRD.

(E) NOTICE FILING REQUIREMENTS FOR SEC REGISTERED INVESTMENT ADVISERS.

- (1) **NOTICE FILING.** The notice filing for an SEC registered investment adviser pursuant to Section 23-42-301(c) of the Act shall be filed with IARD on an executed Uniform Application for Investment Adviser Registration (Form ADV). A notice filing of an SEC registered investment adviser shall be deemed filed when the fee required by Section 23-42-304 of the Act and the Uniform Application for Investment Adviser Registration (Form ADV) are filed with and approved by SEC.
- (2) **ANNUAL RENEWAL.** The annual renewal of the notice filing for an SEC registered investment adviser pursuant to Section 23-42-301(c) of the Act shall be filed with IARD. The renewal of the notice filing for an SEC registered investment adviser shall be deemed filed when the fee required by Section 23-42-304 of the Act is filed with and approved by SEC.
- (3) **UPDATES AND AMENDMENTS.** An SEC registered investment adviser must file with IARD, in accordance with the instructions in the Uniform Application for Investment Adviser Registration (Form ADV), any amendments to the SEC registered investment adviser's Uniform Application for Investment Adviser Registration (Form ADV).

(F) EXPIRATION AND TERMINATION OF REGISTRATION AND NOTICE FILING. Each registration and notice filing shall automatically expire on December 31 of each year without notification by the Commissioner, unless such

registration or notice filing has been properly renewed, or has been previously withdrawn, terminated, or canceled.

- (1) When a registration or notice filing expires as a result of the failure to timely renew, a subsequent application or notice filing may be considered in all respects as an original application or notice filing unless an extension has been requested and granted in writing by the Commissioner prior to expiration.
- (2) A representative's registration terminates upon the termination of such representative's employment with the investment adviser with which he is registered. Such termination must be reported by the investment adviser on Uniform Termination Notice (Form U5). If a Uniform Application for Securities Industry Registration or Transfer (Form U4) is received from the representative whose employment has terminated and is processed by the Commissioner prior to the receipt of the Uniform Termination Notice (Form U5) from the investment adviser with which the representative was employed, such Uniform Application for Securities Industry Registration or Transfer (Form U4) shall be considered not only an application for initial registration with another investment adviser, but also a notification by the representative of termination or withdrawal of his previous registration or application unless, pursuant to Rule 302.02(A)(3), the representative is dually registered.
- (3) Termination of an investment adviser's registration or notice filing for any reason shall automatically constitute termination of all of the registrations of the representatives registered with such investment adviser.

(G) EXAMINATION REQUIREMENTS.

- (1) Examination Requirements. An individual applying to be registered as an investment adviser representative under the Act shall provide the Commissioner with proof of knowledge of the investment advisory business and the Arkansas Securities Act by obtaining a passing score within the two year period immediately preceding the filing date of the application, on one of the following examinations:
 - (a) The Uniform Investment Adviser Law Examination (Series 65 examination); or
 - (b) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

- (2) Waivers. The examination requirements under subsection (G)(1) of this Rule shall not apply to an individual who holds one of the following professional designations:
 - (a) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards;
 - (b) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
 - (c) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
 - (d) Chartered Financial Analyst (CFA) awarded by the CFA Institute;
 - (e) Chartered Investment Counselor (CIC) awarded by The Investment Adviser Association; or
 - (f) Such other professional designation as the Commissioner may by rule or order accept.
 - (3) Any individual who has been registered as an investment adviser representative in any state, commonwealth, territory, district, or province in the United States or Canada within the two years immediately preceding the filing of a completed application and who has at any time in the past met the requirements of subsection (G)(1) of this Rule shall not be required to repeat the examinations in order to become registered as an investment adviser representative.
 - (4) Solely in those cases where circumstances warrant because of the limited time, amount, or nature of the issue or transaction involved, the Commissioner may, upon substantiation by the applicant, waive, any or all of the examination requirements set forth above.
 - (5) An applicant who is an agent for a broker-dealer/investment adviser and who is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative but who has previously met the requirements of subsection (G)(1) of this Rule shall not be required to repeat the examinations in order to become registered as an investment adviser representative in this state.
- (H) **FINANCIAL REQUIREMENT.** Financial statements, as required hereunder, unless otherwise provided, must be audited and shall consist of a balance sheet, statement of operations (income or loss), statement of cash flows, statement of changes in retained earnings, statement of changes in equity or capital. Unless otherwise provided herein, balance sheets shall be audited in accordance with

generally accepted auditing standards by an independent certified public accountant, and accompanied by an opinion acceptable to the Commissioner.

- (1) **INITIAL REGISTRATION.** Each investment adviser applying for initial registration must submit an unaudited balance sheet in a form acceptable to the Commissioner dated within thirty days of such filing. Such balance sheet shall be certified as true and accurate by the chief financial officer of the applicant as indicated on the Uniform Application for Investment Adviser (Form ADV), or, if there is no chief financial officer, the person executing the Uniform Application for Investment Adviser (Form ADV). If the applicant has been engaged in business for one year or more preceding the filing of the application, the applicant may submit audited financial statements for the last fiscal period along with an unaudited balance sheet in a form acceptable to the Commissioner dated within thirty days of such filing.
- (2) **ANNUAL REPORTS.** Every currently registered investment adviser must file with the Commissioner annual financial statements as specified above not later than ninety days after the close of the fiscal year unless written permission to file at some other date is granted by the Commissioner in advance of the date for filing the report.
- (3) Investment advisers that do not maintain customer funds or securities in their custody, nor require prepayment of client fees of more than five hundred dollars (\$500.00) per client or prepayment of fees more than six months in advance, as required hereunder, shall submit unaudited statements of financial condition in a form acceptable to the Commissioner dated within thirty days of such filing. Such statements shall be certified as true and accurate by the chief financial officer of the applicant as indicated on the Uniform Application for Investment Adviser Registration (Form ADV), or, if there is no chief financial officer, by the person executing the Uniform Application for Investment Adviser Registration (Form ADV).
- (4) **PUBLIC RECORD.** All financial statements filed with the Commissioner as part of a registration or annual filing requirement when filed shall be public, except that if the balance sheet is in a format in which is in a format which separate from the remainder of the audited financial statements and is identified as confidential, then it will be so treated.
- (5) For an investment adviser applicant or registrant that maintains a principal place of business in a state other than Arkansas, the requirements of paragraphs (H)(1) and (2) above may be satisfied

by filing with the Commissioner a copy of any financial reports required by and filed with the securities commissioner in such other state. The applicant or registrant shall furnish such further information as requested by the Commissioner when deemed necessary

- (I) **BROCHURE REQUIREMENT.** Unless otherwise provided in this Rule, an investment adviser registered or required to be registered pursuant to Section 23-42-301 of the Act shall furnish each advisory client and prospective advisory client with a written disclosure statement that may be a copy of Part II of its Uniform Application for Investment Adviser Registration (Form ADV) or written documents containing that information required by Part II of the Uniform Application for Investment Adviser Registration (Form ADV), or such other information as the Commissioner may require.

(1) DELIVERY.

- (a) An investment adviser shall deliver the statement required by this section to an advisory client or prospective advisory client either:
 - (i) At a time not less than forty-eight hours prior to entering into any investment advisory contract with such prospective client, or
 - (ii) At the time of entering into any such contract so long as the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.
- (b) Delivery of the statement required by paragraph (a) need not be made in connection with entering into a contract for impersonal advisory services.

(2) OFFER TO DELIVER.

- (a) An investment adviser shall annually and without charge, deliver or offer in writing to deliver, upon written request, the statement required by this section to its advisory clients.
- (b) The delivery or offer required by subdivision (a), need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services of less than two hundred dollars (\$200.00)
- (c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal

advisory services that requires a fee of two hundred dollars (\$200.00) or more, an offer of the type specified in subdivision (a), shall also be made at the time of entering into an advisory contract.

- (3) **RECEIPT OF REQUEST.** Any statement requested in writing by an advisory client or prospective advisory client required by this subsection must be mailed or delivered within seven days of the receipt of the request.
- (4) **OMISSION OF INAPPLICABLE INFORMATION.** If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Uniform Application of Investment Adviser Registration (Form ADV) may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is not applicable to the type of investment advisory service or fee that is rendered or charged, or proposed to be rendered or charged, to that client or prospective client.
- (5) **OTHER DISCLOSURES.** Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or Rules or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

RULE 303 MINIMUM NET CAPITAL REQUIREMENT.

303.01 CAPITAL REQUIREMENTS FOR BROKER-DEALER.

GENERAL REQUIREMENT. All broker-dealers registered under the Act shall at all times have and maintain net capital of no less than the required amount for each broker-dealer as established by SEC Rule 15c3-1 promulgated pursuant to the Securities Act of 1934, which is hereby incorporated by reference.

303.02 CAPITAL REQUIREMENTS FOR INVESTMENT ADVISERS.

Except as otherwise provided in the Act or in these Rules, each registered investment adviser shall at all times have and maintain no less than the minimum net capital required by Section 23-42-303(a) of the Act. Net capital for purposes of Rule 303.02 shall mean the net worth of an applicant or registrant calculated by computing the excess of total assets over total liabilities. The provisions of this Rule shall not apply to an investment adviser whose principal place of business is located in a state other than Arkansas, provided that the investment adviser is registered or licensed as an investment adviser in such state and is in compliance with the net capital requirements of such state.

RULE 304 FILING FEES.

[RESERVED]

RULE 305 CORPORATE SURETY BONDS.

305.01 SURETY BONDS.

A surety bond, as required by Section 23-42-305 of the Act, for a registered broker-dealer, investment adviser, or agent of the issuer shall be maintained and in effect at all times as follows:

- (A) A broker-dealer shall satisfy the fidelity bond requirements imposed by FINRA.
- (B) An investment adviser that holds customer funds or has discretionary authority over customer accounts shall have a surety bond in the amount of fifty thousand dollars (\$50,000).
- (C) An agent of the issuer shall have a surety bond in the amount of twenty-five thousand dollars (\$25,000).

RULE 306 RECORDS AND REPORTS – EXAMINATIONS.

306.01 RECORDS AND REPORTS OF BROKER-DEALERS.

- (A) Each ~~registered~~ broker-dealer shall make, maintain, and preserve books and records in compliance with SEC Rules 17a-3, 17a-4, 15c2-6 and 15c2-11 ~~which~~ promulgated under the securities Exchange Act of 1934 ~~which~~ that are hereby incorporated by reference.
- (B) The Commissioner may, by order, upon written request and for good cause shown, waive any of the requirements of this Rule.

306.02 RECORDS AND REPORTS OF INVESTMENT ADVISERS.

- (A) **GENERAL.** All registered investment advisers shall make and keep true, accurate and current books and records relating to their investment advisory business. The records required to be maintained shall be maintained for a minimum of five years from the date on which the transaction occurred shall include the specific records set forth below. The provisions of this Rule shall not apply to an investment adviser whose principal place of business is located in a state other than Arkansas, provided that the investment adviser is registered or licensed as an investment adviser in such other state and is in compliance with the applicable books and records requirements of such other state. In all other instances, the books and records required to be maintained shall include:

(B) BUSINESS RECORDS.

- (1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income, and expense accounts.
- (3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt of delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the term and conditions of the order, instruction, modification, or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.
- (4) All checkbooks, bank statements, canceled checks, and cash reconciliations of the investment adviser.
- (5) All bills or statements (or copies thereof) paid or unpaid, relating to the business of the investment adviser as such.
- (6) All trial balances, financial statements, net capital computations, and internal audit working papers relating to the business of such investment adviser.
- (7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:
 - (a) Any recommendation made or proposed to be made and any advice given or proposed to be given;
 - (b) Any receipt, disbursement, or delivery of funds or securities; or,
 - (c) The placing or execution of any order to purchase or sell any security.
 - (d) Notwithstanding the provisions of this Rule 306.02, an investment adviser shall not be required to keep:

- (i) Any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
 - (ii) A record of the names and addresses of the persons to whom any notice, circular or other advertisement offering any report, analysis, publication, or other investment advisory service to more than five persons was sent, unless such notice, circular or advertisement is distributed to persons named on any list, in which case, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.
- (8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.
- (9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.
- (10) All investment advisory contracts and other written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser. Such contracts shall indicate the customer's risk tolerance and investment objectives and the risk associated with investments consistent with those objectives, and shall be signed by all persons having an interest in the account.
- (11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to five or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefore.
- (12) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

- (a) Transactions effected in any account over which neither the investment adviser nor any representative of the investment adviser has any direct or indirect influence or control; and
- (b) Transactions in securities which are direct obligations of the United States.

Such records shall state the title and amount of the security involved, the date and nature of the transaction (including: purchase, sale of other acquisition or disposition), the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

- (13) All payroll records, corporate charters, certificates of incorporation, minute books and other records routinely kept in the course of operating a business.

(C) CUSTOMER FUNDS RECORDS. If a registered investment adviser has custody or possession of securities or funds of any client, the records required to be made and kept shall include:

- (1) A journal or other record showing all purchases, sales receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.
- (2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.
- (3) Copies of confirmations of all transactions effected by or for the account of any such client.
- (4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in such security, the amount of interest of each such client, and the location of each such security.

(D) SEGREGATED ACCOUNTS. Registered investment advisers shall at all times keep their customers' securities and funds in trust and segregated from their own securities and funds.

- (1) All financial transactions between the investment adviser and his clients are to be effected through one or more bank accounts, each to be designated "special account for the exclusive benefit of clients of (name of investment adviser);" each shall be separate from any other bank accounts of the investment adviser and shall at no time be used directly or indirectly as security for a loan to the investment adviser by the bank and, shall be subject to no right, lien or claim of any kind in favor of the bank or any persons claiming through the bank; and each shall be separate from any other bank account used by the investment adviser to pay operating and administrative expenses.
 - (2) Immediately after accepting custody or possession of funds or securities from any client, an investment adviser must notify such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, must give such client written notice thereof;
- (E) **SUPERVISED OR MANAGED ACCOUNTS.** Every registered investment adviser who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:
- (1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale.
 - (2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.
- (F) **COMMINGLING OF ACCOUNTS PROHIBITED.** When a registered investment adviser is engaged in more than one enterprise or activity, it shall maintain separate books of accounts and records relating to its securities business and the assets shall not be commingled with those of such other businesses, and there shall be a clearly defined division with respect to income and expenses.
- (G) **COMPLAINT FILE.** Every registered investment adviser shall keep and maintain for a period of five years a complaint file or compliance file which shall contain all complaints made against the firm or its representatives by individuals, financial institutions and other investors. The complaint file should disclose any legal action in process, settled, or threatened against the investment adviser. If the original documents are not maintained in the complaint file, the copy of the document should show the disposition of the original document. If the home office of the investment adviser is not in Arkansas, then branch office located in

Arkansas shall maintain this complaint file for any complaints involving Arkansas agents or customers.

- (H) **RECORD SYSTEM.** In accordance with Section 23-42-205(d)(2) of the Act, any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

RULE 307 UNLAWFUL ACTS BY INVESTMENT ADVISERS.

307.01 PERFORMANCE - BASED COMPENSATION EXEMPTION.

- (A) It shall be unlawful for an investment adviser to enter into, extend or renew an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client unless the following conditions of this Rule are met.

- (1) **NATURE OF THE CLIENT.** The client entering into the contract must be:

- (a) A natural person or a company who, immediately after entering into the contract has at least five hundred thousand dollars (\$500,000.00) under the management of the investment adviser; or
- (b) A person who the investment advisers and their investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds one million dollars (\$1,000,000.00) The net worth of a natural person may include assets held jointly with that person's spouse.

- (2) **COMPENSATION FORMULA.** The compensation paid to the investment adviser under this Rule with respect to the performance of any securities over a given period shall be based on a formula that:

- (a) Includes, in the case of securities for which market quotations are readily available, the realized capital losses and unrealized capital depreciation of the securities over the period;
- (b) Includes, in the case of securities for which market quotations are not readily available:
 - (i) The realized capital losses of the securities over the period; and

- (ii) If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and
 - (c) Provides that any compensation paid to the adviser under this rule is based on the gains less the losses computed in accordance with Rule 307.01(A)(2)(a)-(b) in the client's account for a period of not less than one year.
- (3) **DISCLOSURE.** Before entering into the advisory contract and in addition to the requirements of Part II of its Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:
- (a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;
 - (b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;
 - (c) The periods that will be used to measure investment performance throughout the contract and their significance in the computation of the fee;
 - (d) The nature of any index that will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate, and
 - (e) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, how the securities will be valued and the extent to which the valuation will be independently determined.
- (4) **CONTRACT.** The investment adviser (and any investment adviser representative) who enters into the contract must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, alone or together with the client's independent agent, understands the proposed

method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee.

- (B) **INDEPENDENT AGENT.** Nothing in this rule shall relieve a client's independent agent from any obligation to the client under applicable law.

307.02 CUSTODY OF CLIENT FUNDS OR SECURITIES BY INVESTMENT ADVISERS.

- (A) It shall be unlawful for any registered investment adviser to take or have custody of any securities or funds of any client unless:
- (1) The investment adviser notifies the Commissioner in writing that the investment adviser has or may have custody. Such notification may be given on Uniform Application of Investment Adviser Registration (Form ADV);
 - (2) The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss;
 - (3)
 - (a) All client funds are deposited in one or more bank accounts containing only clients' funds,
 - (b) Such account(s) are maintained in the name of the investment adviser as agent or trustee for such client(s), and
 - (c) The investment adviser maintains a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;
 - (4) Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice thereof to the client;

- (5) At least once every three months, the investment adviser sends each client an itemized statement showing the funds and securities in the investment adviser's custody at the end of such period and all debits, credits and transactions in the client's account during such period; and
 - (6) At least once every calendar year, an independent certified public accountant or public accountant verifies all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that such accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be maintained and made available for examination.
- (B) This Rule 307.02 shall not apply to an investment adviser also registered as a broker-dealer in Arkansas who is:
- (1) Subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers), promulgated under the Securities Exchange Act of 1934; or
 - (2) A member of an exchange whose members are exempt from SEC Rule 15c3-1, under the provisions of paragraph (b)(2) thereof, and the broker-dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

RULE 308 DENIAL, SUSPENSION, REVOCATION OR WITHDRAWAL OF REGISTRATION.

308.01 UNFAIR, MISLEADING, AND UNETHICAL PRACTICES OF BROKER-DEALER OR AGENT.

Each broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The following conduct shall be considered grounds for denial, suspension or revocation of a broker-dealer or agent registration, in addition to such other unethical practices within the meaning of Sections 23-42-308 and 23-42-507 of the Act.

- (A) **FAILURE TO TIMELY COMPLETE THE TRANSACTION.** Engaging in a pattern of unreasonable delays in delivery of securities or remittance of funds necessary to complete the transaction within the time frame customary in the trade.
- (B) **MISREPRESENTATIONS.** Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer, or

making unjustified or untruthful representations that securities sold will subsequently become listed or traded, or making representations that a market will be established or that the securities will be subject to an increase in value.

- (C) **UNDISCLOSED FEES.** Charging undisclosed, unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business, except where such fees are negotiated or have been previously disclosed to the customer.
- (D) **RECOMMENDATIONS TO CUSTOMERS.** Recommending to a customer the purchase, sale or exchange of any security when a broker-dealer or agent does not have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs, or encouraging a customer to invest beyond his immediate financial resources.
- (E) **EXCESSIVE TRADING.** Inducing trading in a customer's account that is excessive in size or frequency in view of the financial resources and character of the account exclusively for the purpose of accumulating profits.
- (F) **BOND PRE-SALES.**
 - (1) Entering into a pre-sale contract with respect to any bond that is required by laws of the State of Arkansas to be sold at public sale, or to obtain any beneficial interest, direct or indirect, in the initial purchase of any bonds with respect to which the broker-dealer has acted as fiscal agent. This section shall not apply to industrial bonds issued under Act 9 of 1960, to school bonds for school districts if the requirements set forth in subparagraph (2) of this Rule 308.01(F) are met, or to any other bonds provided that it is shown to the satisfaction of the Commissioner in the case of such other bonds that such an arrangement is to the benefit of the issuer. For the purposes of this section the following terms shall have the indicated meanings, unless the context requires otherwise.
 - (a) "Bonds" means bond, notes and other evidence of indebtedness, both in definitive and in temporary form, whether as notes or bonds, issued by or in the name of any county, city, town, school district, improvement district, state educational institution, or other public issuer.
 - (b) "Pre-Sale Contract" means any contract for the sale and purchase of bonds entered into prior to the date advertised for the public sale of the bonds.

- (c) "Fiscal Agent" means any broker-dealer employed for compensation to advise and assist in the sale of an issuer's bonds.
- (2) The prohibition set forth in Rule 308.01(F)(1) shall not apply to school bonds for a school district for which a broker-dealer serves as fiscal agent if each of the following conditions are met:
 - (a) The broker-dealer shall disclose in the preliminary official statement for each bond issue that it has reserved the right to submit a competitive bid;
 - (b) The broker-dealer shall advise the school district prior to the date bids are to be received whether it will submit a bid;
 - (c) In the event that the only bid received by the school district is from the broker-dealer, acceptance of the bid by the school district is subject to same day review and approval by the Commissioner;
 - (d) The broker-dealer will receive prior to the date bids are received, written authorization from the issuer in compliance with MSRB Rule G-23; and
 - (e) All bids shall be submitted by electronic or sealed bid only.
- (G) **FISCAL AGENT OR UNDERWRITER.** Encouraging a person to issue bonds in amount exceeding those not reasonable within its ability to repay, falsely and willfully leading a person to believe the broker-dealer will see that all bonds will be sold or failing to reveal to the person with which it is doing business a financial interest in other enterprises, such as construction companies, who may receive proceeds from the sale of the bonds.
- (H) **ADJUSTED TRADING.** Utilizing a trading technique whereby a transaction or a series of transactions is executed wherein a party to the transaction or series of transactions attempts to defer the recognition of a decrease in the value of a security by:
 - (1) The sale of a security at a price other than at market value;
 - (2) The purchase of a security at a price other than at market value; or,
 - (3) The use of fees, payments or other consideration in such a manner that the composite design of the related transactions is to defer the recognition of a loss or decrease.

Adjusted trading may occur if more than one broker-dealer or more than one customer is involved in the transaction. Adjusted trading may occur whether the

security is for future delivery, current delivery or if the security is not yet issued. If any consideration is given, other than normal payment for the security at its market value, by any party to the series of purchases or sales, such consideration shall be considered in determining if the trading technique as a whole constitutes adjusted trading.

- (I) **MARKUPS.** Charging excessive markups or entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security. Bids and offers should correspond with the actual market. Markups may vary, for among other reasons, as a result of such factors as quantity, quality, market conditions, risk to the broker-dealer and maturity, but should in all transactions be reasonable and fully competitive.
- (J) **MARKET VALUE.** Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer; or offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.
- (K) **FAVORABLE PRICE.** Effecting a transaction for or with a customer without exercising reasonable diligence to ascertain the best market price for the subject security so that the resultant price to the customer is as favorable as possible under prevailing market conditions.
- (L) **INTERPOSITIONING.** Interjecting a third party between the broker-dealer and the best available market or the broker-dealer and the customer except in cases where the broker-dealer can demonstrate that to his knowledge at the time of the transaction the total cost of proceeds of the transaction, was equal to or better than the prevailing inter-dealer market for the security.
- (M) **CONTROLLING PERSONS OR AFFILIATES.** Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.
- (N) **FICTITIOUS ACCOUNTS.** Establishing or maintaining an account containing fictitious or disguised information.

- (O) **UNAUTHORIZED TRANSACTIONS.** Causing the execution of a transaction which is unauthorized by a customer or the sending of a confirmation in order to cause a customer to accept transactions not actually agreed upon or exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders.
- (P) **MISUSE OF CUSTOMERS' FUNDS OR SECURITIES.** Borrowing or unauthorized use of customers' funds or securities.
- (Q) **MISLEADING ADVERTISING.** Using any advertising or sales material in such a fashion as to be deceptive or misleading.
- (R) **OUTSIDE SALES ACTIVITIES.** Effecting securities or non-securities transactions not recorded on the regular books or records of the broker-dealer unless the activity is authorized in writing by the broker-dealer and such authorization is maintained in the broker-dealer's records.
- (S) **SHARING PROFITS.** Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents; or without notice to the customer dividing or otherwise splitting the agent's commission, profits or other compensation from the purchase or sale of securities.
- (T) **FURNISHING INFORMATION.** Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written demand or complaint.
- (U) **MISUSE OF FIRM NAME.** Implying that a broker-dealer is a bank or other kind of financial institution, provided this does not prohibit the use of the term "investment banker."
- (V) **FURNISHING DOCUMENTS.** Unreasonably failing to promptly deliver or provide documents or information in possession of or under control of the registrant to the Commissioner after receipt of a written request from the Commissioner.
- (W) **DISHONEST USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS.**
 - (1) Consistent with the Model Rule on the Dishonest Use of Senior-Specific Certifications and Professional Designations adopted by the NASAA on March 20, 2008, the use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing

in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of Rule 308.01.

- (2) The prohibited use of such certifications or professional designations includes, but is not limited to, the following:
 - (a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
 - (b) Use of a nonexistent or self-conferred certification or professional designation;
 - (c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
 - (d) Use of a certification or professional designation that was obtained from a designating or certifying organization that:
 - (i) Is primarily engaged in the business of instruction in sales and/or marketing;
 - (ii) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
 - (iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - (iv) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.
- (3) There is a rebuttable presumption that a designation or certifying organization is not disqualified solely for purposes of paragraph 2(d) above when the organization has been accredited by:
 - (a) The American National Standards for Certifying Institute; or
 - (b) The National Commission for Certifying Agencies; or

- (c) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued there from does not primarily apply to sales and/or marketing.
- (4) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:
 - (a) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
 - (b) The manner in which those words are combined.
- (5) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:
 - (a) Indicates seniority or standing within the organization; or
 - (b) Specifies an individual's area of specialization within the organization.

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

- (6) Nothing in this Rule shall limit the Commissioner's authority to enforce existing provisions of law.

(X) OTHER UNFAIR, MISLEADING AND UNETHICAL PRACTICES. The unfair, misleading or unethical practices set forth above are not exclusive of other activities, such as forgery, embezzlement, non-disclosure or misstatement of material facts, manipulations and various deceptions, which shall be considered grounds for suspension or revocation and the Commissioner may suspend or revoke a registration when necessary or appropriate in the public interest.

308.02 FRAUDULENT, DECEPTIVE, DISHONEST OR UNETHICAL PRACTICES OF INVESTMENT ADVISERS.

Investment advisers have a duty to act primarily for the benefit of their clients. All investment advisers and representatives shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The following conduct shall constitute fraudulent or deceptive practices and shall be considered grounds for denial, suspension or revocation of an investment adviser or representative registration, or for the issuance of a cease and desist order or other action under Section 23-42-209 of the Act, in addition to other dishonest or unethical practices within the meaning of Sections 23-42-307 and 23-42-308 of the Act. The provisions of this rule shall apply to an investment adviser that is neither registered nor required to register pursuant to Section 23-42-301(c) of the Act only to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

- (A) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable examination of the client's records as may be provided to the investment adviser.
- (B) Placing an order to purchase or sell a security for the account of a client without authority to do so.
- (C) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.
- (D) Exercising any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client, unless the discretionary authority relates solely to the price at which, or the time when, an order involving a definite amount of a specified securities shall be executed, or both.
- (E) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
- (F) Borrowing money, securities, or anything of value from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds or securities.
- (G) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds, a broker-dealer, or the client is an affiliate of the investment adviser.

- (H) Misrepresenting to any client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.
- (I) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.)
- (J) Charging a client an advisory fee that is unreasonable in light of the type of service to be provided, the experience and expertise of the investment adviser or the bargaining power of the client.
- (K) Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser or any of its employees that could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to, the following:
 - (1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and
 - (2) The fact that an advisory fee for rendering advice will be charged to the client when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.
- (L) Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the advice that will be rendered.
- (M) Publishing, circulating or distributing any advertisement:
 - (1) That refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser, or
 - (2) That refers, directly or indirectly, to past specific recommendations of such investment adviser which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not

less than one year if such advertisement, and such list if it is furnished separately:

- (a) State the name of each such security recommended, the date and nature of each such recommendation (for example, whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price such security as of the most recent practicable date; and
 - (b) Contain the following cautionary legend on the first page thereof in print or type used in the body or text thereof: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list", or
- (3) That represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or
- (4) That contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or
- (5) That contains any untrue statement of a material fact, or which is otherwise false or misleading.
- (6) For the purposes of this rule the term "advertisement" shall include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any electronic publication, by radio or television, or by any medium that offers any of the following:
 - (a) Any analysis, report, or publication concerning securities, or that is to be used in making any determination as to when to buy or sell any security, or that security to buy or sell;
 - (b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or that security to buy or sell; or

- (c) Any other investment advisory service with regard to securities.
- (N) Disclosing the identity, affairs, or investment of any client to any third party unless required by law to do so, or unless consented to by the client.
- (O) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds in the absence of compliance with the provisions of Rule 307.02.
- (P) Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the investment objectives and risk tolerance levels for the client, the advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.
- (Q) Limiting, attempting to limit, or representing to a client the existence of any limitation on such client's ability to execute recommended transactions through any broker-dealer he may choose. An affiliate of the investment adviser may be recommended as long as the affiliate relationship is fully disclosed to the client in writing, and that the recommended affiliate is in the client's best interest.
- (R) Unreasonably failing to deliver or provide documents or information in possession of or under control of the registrant to the Commissioner after receipt of a written request from the Commissioner.
- (S) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.
- (T) Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.
- (U) Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940.

- (V) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative and contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser or investment adviser representative is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.
- (W) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this act or any rule or regulation thereunder.
- (X) Dishonest Use of Senior-Specific Certifications and Professional Designations
 - (1) Consistent with the Model Rule on the Dishonest Use of Senior-Specific Certifications and Professional Designations adopted by the NASAA on March 20, 2008, the use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of Rule 308.02.
 - (2) The prohibited use of such certifications or professional designations includes, but is not limited to, the following:
 - (a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
 - (b) Use of a nonexistent or self-conferred certification or professional designation;
 - (c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
 - (d) Use of a certification or professional designation that was obtained from a designating or certifying organization that:
 - (i) Is primarily engaged in the business of instruction in sales and/or marketing;

- (ii) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
 - (iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - (iv) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.
- (3) There is a rebuttable presumption that a designation or certifying organization is not disqualified solely for purposes of paragraph 2(d) above when the organization has been accredited by:
 - (a) The American National Standards for Certifying Institute: or
 - (b) The National Commission for Certifying Agencies; or
 - (c) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued there from does not primarily apply to sales and/or marketing.
- (4) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:
 - (a) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
 - (b) The manner in which those words are combined.
- (5) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:
 - (a) Indicates seniority or standing within the organization; or

- (b) Specifies an individual's area of specialization within the organization.

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

- (6) Nothing in this Rule shall limit the Commissioner's authority to enforce existing provisions of law.
- (Y) Other fraudulent, deceptive, dishonest or unethical practices. The activities set forth above are not all inclusive. Any other activities employing any device, scheme or artifice to defraud or engaging in any act, practice or course of business that operates or would operate as a fraud or deceit shall constitute grounds for denial, suspension or revocation under Section 23-42-308 of the Act, or for the institution of a cease and desist order or other action under Section 23-42-209 of the Act.

**308.03 RULES OF PRACTICE AND PROCEDURE REGARDING
DENIAL SUSPENSION OR REVOCATION.**

The rules of practice and procedure to be followed in proceedings for the denial, suspension or revocation of a broker-dealer, agent, or investment adviser application or registration are set forth in the APA and Chapter 6 of these Rules.

CHAPTER 4

REGISTRATION OF SECURITIES

RULE 401 REGISTRATION BY NOTIFICATION.

401.01 REQUIREMENTS.

A registration statement under Section 23-42-401 of the Act shall contain the following information to be accompanied by the following documents, in addition to the information specified in Section 23-42-401(b), 23-42-404(c) and the consent to service of process required by Section 23-42-107(a) of the Act:

- (A) Statement demonstrating eligibility of the issuer for registration by notification, showing that the issuer has been in continuous operation for at least five years, has not been in default during the current fiscal years in the payment of principal, interest, or dividends on any security of the issuer with a fixed maturity or a fixed interest or dividend provision, and satisfied the average net earnings requirements established by Section 23-42-401(a)(1)(B) of the Act (identifying all securities subject to the average net earnings requirements and compute the percentage limitations as necessary).
- (B) One copy of the latest form of prospectus to be used in the offering.
- (C) Underwriting Agreement, Agreement among Underwriters and Selected Dealers Agreement.
- (D) Indenture or copy of any other instrument covering the security to be registered.
- (E) Signed or conformed copy of opinion of counsel as to the legality of the security being registered.
- (F) Specimen copy of security.
- (G) Consent to service of process accompanied by appropriate corporate resolution.
- (H) One copy of any pamphlet, circular, form letter, advertisement, television, radio, or other sales literature intended as of the effective date to be used in connection with the offering.
- (I) Method of distribution in Arkansas, including the name of the registered broker-dealer or registered agent of the issuer, as appropriate.
- (J) Statement describing any stock options or other security options outstanding, or to be created in connection with this offering, together with the amount of any such options held or to be held by any director or officer of the issuer; and person

owning of record or beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer; or any person receiving underwriting and selling discounts, commissions or finders fees.

- (K) An undertaking to forward all amendments to the registration statement and the final prospectus, or any further amendments or supplements thereto.
- (L) Any other information the Commissioner may require or permit.

401.02 EFFECTIVENESS.

A registration statement shall not be considered as filed for purposes of automatic effectiveness under Section 23-42-401(c) of the Act until it contains all information, documents, fees and other matters required by the Act and Rule 401.01. In appropriate instances the Commissioner may waive any of the requirements of this Rule, provided such requirements are not specifically set forth in the Act.

RULE 402 REGISTRATION BY COORDINATION.

402.01 REQUIREMENTS.

A registration statement under Section 23-42-402 of the Act, shall contain the following information and be accompanied by the following documents, in addition to the information specified in Section 23-42-404(c) of the Act and the consent to service of process required by Section 23-42-107(a) of the Act:

- (A) One copy of the latest form of prospectus filed under the Securities Act of 1933;
- (B) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;
- (C) The maximum underwriting and selling discounts or commissions;
- (D) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered;
- (E) The name of the broker-dealer or agent registered under the Act who will be effecting transactions in the securities being registered in this state;
- (F) Any other information or copies of any documents required to be filed under Form U-1;
- (G) An undertaking to forward all amendments to the federal registration statement, other than an amendment which merely delays the effective date of the

registration statement, not later than the first business day after they are forwarded to or filed with the SEC or such longer period as the Commissioner permits; and

- (H) Any other information the Commissioner may require or permit.

402.02 EFFECTIVENESS.

The Commissioner will certify the effectiveness of the registration statement by issuing a letter or electronic notification stating effectiveness, but the failure to issue notification shall not delay the effectiveness of a registration statement meeting the requirements of Section 23-42-402(c) of the Act.

RULE 403 REGISTRATION BY QUALIFICATION.

403.01 REQUIREMENTS.

A registration statement under Section 23-42-403 of the Act, shall contain the following information and be accompanied by the following documents, in addition to the information specified in Sections 23-42-403(b) and 23-42-404(c) of the Act and the consent to service of process required by Section 23-42-107(a) of the Act:

- (A) A corporate surety bond posted by the issuer in an amount equaling 10% of the maximum aggregate offering price at which the securities being registered are to be offered in this State. Any investor, or security holder of such issuer, having a right of action under the Act, shall have a right of action under the bond; however, in any event, the total liability of the surety to all such persons shall not exceed the said amounts specified in the bond. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless suit is brought within three years after the date of the expiration of the original or renewal registration. In the event the securities are never issued and once sufficient proof is provided to the Commissioner, the corporate surety bond may be discontinued or canceled;
- (B) The name of the broker-dealer or agent registered under the Act who will be effecting transactions in the securities being registered in this State;
- (C) The maximum underwriting and selling discounts or commissions; and
- (D) Such additional information as the Commissioner may require or permit.

403.02 PROSPECTUS REQUIREMENTS.

- (A) As a condition of registration by qualification under Section 23-42-403 of the Act, a prospectus or offering circular meeting the requirements of the Act and this Rule shall be sent or given to each person to whom an offer is made concurrently with the earliest of:

- (1) The first written offer made to him, other than by means of public advertisement, by or on behalf of the issuer or any other person offering the securities;
- (2) The confirmation of the sale;
- (3) The payment pursuant to any such sale; or
- (4) The delivery of the security pursuant to any such sale;

The Commissioner may require that a subscription agreement be signed by each purchaser, acknowledging that he has received a copy of the prospectus.

- (B) The prospectus shall contain full disclosure of all material facts relating to the issuer and the offering and sale of the securities being registered. The prospectus shall be designated an exhibit to and constitute a part of the registration statement. A prospectus meeting the requirements of Registration Statement (Form S-1) under the Securities Act of 1933, Small Corporate Offering Registration (Form U-7, SCOR) or other uniform forms deemed acceptable to the Commissioner will ordinarily satisfy the requirements of this Rule.
- (C) Any information specified in Section 23-42-403(b) of the Act or subsection 403.01 of this Rule may be included in the prospectus, if a cross-reference table is filed showing the location of the information in the prospectus.
- (D) In the case of any material change relating to the issuer of the offering subsequent to the filing of the prospectus, an amended or revised prospectus shall be filed immediately that reflects such changes.

RULE 404 REGISTRATION STATEMENTS GENERALLY.

404.01 GENERAL REQUIREMENTS.

- (A) **GENERAL POLICY.** Each application for registration shall comply with the requirements set forth in this Rule 404 unless a request for a deviation is granted by the Commissioner. All requests for deviation from registration policies must be in writing and submitted to the Commissioner, who shall set forth in writing the reason for granting any such request, if such request is granted.

For a registration raising questions not herein covered, policies adopted by NASAA will generally be used as a guideline.

(B) FINANCIAL STATEMENTS.

- (1) **PREPARATION.** Financial statements required to be included in a registration statement shall be prepared, audited and certified by

independent certified public accountants in accordance with generally accepted accounting procedures and practices, applied on a consistent basis accompanied by an opinion acceptable to the Commissioner.

Audited financial reports may be waived if the financial reports meet the requirements of SCOR or offerings under Regulation A promulgated under the Securities Act of 1933.

- (2) **ANNUAL FINANCIAL REPORTS.** The Commissioner may require as a condition for registration that financial reports be filed to keep reasonably current the financial information contained in any effective registration statement.

Financial reports, when required, shall be submitted annually within ninety days after the close of each fiscal year unless other arrangements are approved in advance by the Commissioner.

- (C) **PROMOTIONAL SECURITIES OR CHEAP STOCK.** Promotional Securities or "Cheap Stock" securities that have been issued within three years of the date of filing or are to be issued to underwriters, promoters or insiders for an amount less than the public offering price shall be in compliance with the NASAA Statement of Policy Regarding Promotional Shares and the Guidelines for the Model Promotional Shares Escrow Agreement.
- (D) **IMPOUNDMENT OF PROCEEDS.** The Commissioner may require as a condition to registration, that all proceeds from sales of securities be impounded in accordance with the NASAA Statement of Policy Regarding the Impoundment of Proceeds.
- (E) **COMMISSIONS AND EXPENSES.** Commissions and expenses allowable to broker-dealers and issuers must in every instance be reasonable and justified and in compliance with the NASAA Statement of Policy Regarding Underwriting Expenses, Underwriter's Warrants, Selling Expenses And Selling Security Holders.
- (F) **OPTIONS AND WARRANTS.** Options or warrants to purchase securities must be justified by the applicant and in compliance with the NASAA Statement of Policy Regarding Options and Warrants.
- (G) **PROMOTERS EQUITY INVESTMENT.** Where an issuer is in the promotional, exploratory, or development stage, the ratio of investment by promoters or insiders must be determined as reasonable and equitable in the light of the facts and circumstances presented in each particular case, but will be considered objectionable if not in compliance with the guidelines of the NASAA Statement of Policy Regarding Promoters' Equity Investment.

(H) **NON-VOTING COMMON STOCK.** Securities of an issuer having more than one class of common stock must be in compliance with the NASAA Statement of Policy Regarding Unequal Voting Rights.

(I) **OFFERING PRICE.** In the case of an issuer that has been actually engaged in business or operation, the amount for which a security is being offered to the public must bear some reasonable relationship to:

- (1) The market value, if any, or
- (2) The price-earnings ratio, as reflected by its financial statements covering an average of the preceding three years, or such shorter duration of experience of operation as may be applied.

In the absence of an established or determinable market value or price-earnings ratio, the book value or asset value of the issuer may be taken into consideration in justifying or substantiating the reasonableness of the offering price.

(J) **PREFERRED STOCK.** The offering or sale of preferred stock of an issuer may be deemed unfair and inequitable to purchasers if not in compliance with the NASAA Statement of Policy Regarding Preferred Stock.

(K) **DEBT SECURITIES.** The offering or sale of debt securities, including debentures, notes and bonds of an issuer, may be deemed unfair and inequitable to purchasers if not in compliance with the NASAA Statement of Policy Regarding Debt Securities.

(L) **NON-EXEMPT REORGANIZATIONS.** In the case of any reorganization for which an exemption from registration is not available under Sections 23-42-503 and 23-42-504 of the Act, and registration of any securities to be issued as a part of the reorganization is required pursuant to Sections 23-42-401, 23-42-402, or 23-42-403 of the Act, the Commissioner may waive all or any part of the standards of review imposed upon such registration by Rule 404.01, if:

- (1) No constituent party to the reorganization or any officer, director or person owning ten percent or more of the outstanding shares of any class of equity securities of such constituent party is an affiliate, and
- (2) The final prospectus or other comparable document filed with the application for registration of the securities contains a representation that the terms of the reorganization have been negotiated at arms' length by all constituent parties.

- (M) **ISSUER COMPLETION REPORT.** For registrants paying less than the maximum filing fee, a final report, which may be in letter form or on a form provided by the Commissioner, specifying the amount of securities sold in this State shall be provided to the Commissioner within thirty days after the earlier of:
- (1) The expiration of the effectiveness of a registration statement filed under the Act; or
 - (2) The termination of the offering through which the securities offered by the registration statement have been fully sold and distributed to the public.
- (N) **UNSOUND FINANCIAL CONDITION.** The offer or sale of securities by an issuer may be deemed unfair and inequitable to purchasers if not in compliance with the NASAA Statement of Policy on Unsound Financial Condition.
- (O) **SPECIFICITY IN USE OF PROCEEDS.** The prospectus shall disclose all information required to be in compliance with the NASAA Statement of Policy on Specificity in Use of Proceeds.
- (P) **LOANS AND OTHER MATERIAL AFFILIATED TRANSACTIONS.** Loans and other material affiliated transactions must be disclosed with the NASAA Statement of Policy on Loans and other Material Affiliated Transactions.
- (Q) **MORTGAGE PROGRAM GUIDELINES.** Direct participation mortgage programs must follow the NASAA Statement of Policy on Mortgage Program Guidelines.
- (R) **REGISTRATION OF ASSET BACKED SECURITIES.** Asset backed securities shall register and comply with the NASAA Statement of Policy on Registration of Asset Backed Securities.
- (S) **REAL ESTATE INVESTMENT TRUSTS.** The offering or sale of real estate investment trusts, may be deemed unfair and inequitable to purchases if not in compliance with the NASAA Statement of Policy Regarding Real Estate Investment Trusts.
- (T) **REAL ESTATE PROGRAMS.** The offering or sale of real estate programs may be deemed unfair and inequitable to purchasers if not in compliance with the NASAA Statement of Policy Regarding Real Estate Programs.
- (U) **OMNIBUS GUIDELINES.** The offering or sale of programs involving omnibus by an issuer, may be deemed unfair and inequitable to purchasers if not in compliance with the NASAA Statement of Policy Omnibus Guidelines.

- (V) **EQUIPMENT PROGRAMS.** The offering or sale of equipment programs of an issuer, may be deemed unfair and inequitable to purchasers if not in compliance with the NASAA Statement of Policy Equipment Programs.
- (W) **REGISTRATION OF COMMODITY POOL PROGRAMS.** The offering or sale of commodity pool programs, must be properly registered by an issuer, may be deemed unfair and inequitable to purchasers if not in compliance with the NASAA Statement of Policy Regarding Registration of Commodity Pool Programs.

**RULE 405 STOP ORDER DENYING, SUSPENDING, OR REVOKING
REGISTRATION STATEMENT.**

405.01 GENERAL PROVISIONS.

- (A) **GENERAL POLICY.** Each application for registration shall comply with the requirements of the Act and Rules unless a request for deviation from such rule is requested and granted by the Commissioner. Any unauthorized deviation from the requirements of the Act and Rules shall be grounds for the issuance of a stop order denying, suspending or revoking the registration statement.
- (B) **OTHER CAUSES FOR DENIAL, SUSPENSION OR REVOCATION.**
In addition to an action pursuant to subsection 405.01(a) of these Rules, the Commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of any registration statement for any cause stated in Section 23-42-405(a) of the Act, whether similar to or different from the causes enumerated in these Rules, when necessary or appropriate in the public interest or for the protection of purchasers.
- (C) **RULES OF PRACTICE AND PROCEDURE REGARDING DENIAL, SUSPENSION OR REVOCATION.** The rules of practice and procedure to be followed in proceedings for the denial, suspension or revocation of effectiveness of any registration statement are set forth in Rule 601 of these Rules.

CHAPTER 5
REGULATION OF TRANSACTIONS

RULE 501 SALE OF UNREGISTERED NON-EXEMPT SECURITIES.

[RESERVED]

RULE 502 FILING OF PROSPECTUS, SALES LITERATURE, ETC.

502.01 ADVERTISING.

- (A) **GENERAL PROVISIONS.** Any ~~advertisement, display, pamphlet, brochure, letter, article of communication published in any newspaper, magazine or periodical, or script or any recording, radio or television announcement, broadcast, commercial or any sort of communication made by electronic means to be used or circulated~~ public advertising in connection with the sale and promotion of a public offering of registered securities or securities exempted under Sections 23-42-503(a) (7) and 23-42-503(c) of the Act and Rule 503.01(B)(1) shall be subject to the following requirements and restrictions.
- (B) **FILING REQUIREMENT.** All sales literature or promotional material, other than that exempted by the Act or this Rule, shall be governed by the following:
- (1) The applicant shall submit to the Commissioner, at least five days prior to its intended use or dissemination, one copy of such proposed material;
 - (2) If not disallowed by the Commissioner by written notice or otherwise within three days from the date filed, the use of such material as submitted will be permitted; and
 - (3) The Commissioner will not issue formal approval of such literature, and it is the responsibility of the user to determine the accuracy and reliability of the statements and material so used and in conformity with this Rule.
- (C) **SPECIFIC PROHIBITIONS.** The following devices or sales presentations, and the use thereof, will be deemed deceptive or misleading practices:
- (1) Comparison charts or graphs showing a distorted, unfair or unrealistic relationship between the issuer's past performance, progress or success and that of another company, business, industry or investment media;
 - (2) Lay-out, format, size, kind and color of type used so as to attract attention to favorable or incomplete portions of the advertising matter, or to minimize less favorable, modified or modifying portions necessary to make the entire advertisement a fair and truthful representation;

- (3) Statements or representations that by themselves predict future profit, success, appreciation, performance, or otherwise related to the merit or potential of the securities that are positive or imperative in form; such statements or representations should clearly indicate that they represent solely the opinion of the publisher thereof;
 - (4) Generalizations, generalized conclusions, opinions, representations and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by such additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation;
 - (5) Sales kits, film clips, displays, exposures, which alone or by sequence and progressive compilation, tend to present an accumulative or composite picture or impression of certain, or exaggerated potential, profit, safety, return or extraordinary investment opportunity or similar benefit to the prospective purchaser;
 - (6) Distribution of any non-factual or inaccurate data or material by words, pictures, charts, graphs, or otherwise, based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions or excessive optimism;
 - (7) Any package or bonus deal, prize, gift, gimmick or similar inducement, combined with or dependent upon the sale of some other product, contract or service, unless such unit or combination has been fully disclosed and specifically described and identified in the application as the security being offered.
- (D) **EXEMPTION.** Public advertising by any means, including the forms and types set forth in Rule 502.01(E), of securities being offered for sale in transactions exempted by Sections 23-42-504(a)(9) of the Act is prohibited.
- (E) **EXCEPTIONS.** The following forms and types of advertising are permitted without the necessity for filing or prior authorization by the Commissioner, unless specifically prohibited.
- (1) So-Called "tombstone" advertising, containing no more than the following information:
 - (a) Name and address of issuer;
 - (b) Identity of title of security;
 - (c) Per unit offering price, number of shares and amount of offering;
 - (d) Brief, general description of business;

- (e) Name and address of underwriter, or address where offering circular or prospectus can be obtained;
 - (f) Date of issuance.
 - (2) Dividend notices, proxy statements and reports to shareholders, including investment company quarterly and semi-annual reports.
 - (3) Sales literature, advertising or market letters prepared in conformity with the applicable regulations and in compliance with the filing requirements of the SEC, FINRA, or recognized securities exchanges.
 - (4) Factual or informative letters, bulletins or releases, similar to "news letters", relating to issuer's progress or activities, or current financial condition.
 - (5) Dissemination of any data incorporated in the offering circular or prospectus, so long as the use of such material, out of context, does not tend to detract from, distort, supersede or express a different meaning of the representations or disclosures contained therein.
- (F) **VIOLATIONS.** Any person who prepares, distributes or causes to be issued or published any sales literature that is knowingly inaccurate, false, misleading or tending to mislead in any material respect or otherwise in violation of the provisions herein may be held responsible and accountable therefor in any administrative or civil proceeding arising under the Act or these Rules.

RULE 503 EXEMPTED SECURITIES.

THESE RULES DO NOT EXEMPT SECURITIES FROM THE REMAINING PROVISIONS OF THE ACT OR THESE RULES, INCLUDING SECTION 23-42-507 OF THE ACT.

503.01 CLASSES OF EXEMPT SECURITIES.

(A) SECURITIES EXEMPTED UNDER SECTION 23-42-503(a).

- (1) Government Securities

[RESERVED]

- (2) Canadian Government Securities

[RESERVED]

- (3) Bank Securities.

[RESERVED]

- (4) Savings and Loan Association Securities.

[RESERVED]

- (5) Public Utility Securities.

[RESERVED]

- (6) World Class Foreign Issuers. In order to be exempt under Section 23-42-503(a)(6) of the Act, a security of a world class foreign issuer must meet the qualifications set forth in the NASAA Statement of Policy on World Class Foreign Issuer Exemption.

- (7) Non-Profit Organization Securities. In order to be exempt under Section 23-42-503(a)(7), a security must meet the qualifications as set forth in the appropriate NASAA Statement of Policies on Church Bonds, Health Care Facility Offerings, or Guidelines for General Obligation Financing by Religious Denominations. The proof of exemption required to be filed pursuant to Section 23-42-503(d) shall contain the following unless waived by the Commissioner:

- (a) The filing fee as set forth in Section 23-42-503(d)(5) of the Act;
- (b) A declaration that Section 23-42-503(a)(7) of the Act is applicable;
- (c) A copy of the Articles of Incorporation and Bylaws of the issuer or the equivalent entity governance documents;
- (d) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;
- (e) Copies of all advertising or other material to be distributed in connection with the offering;
- (f) A copy of the subscription agreement or other similar agreement;
- (g) A copy of any proposed agreement or proposed form of agreement with a securities broker-dealer or underwriter;
- (h) A copy of the preliminary or definitive Trust Indenture and/or Trust Agreement, if any;

- (i) An opinion of counsel attesting to the authority of the issuer to offer and sell the securities and stating that after the sale the securities will be valid, binding obligations of the issuer in accordance with the issuer's governing documents; and
 - (j) Any additional information or documentation that the Commissioner may require.
- (8) Employee Stock Purchase, Savings, Pension, Profit-Sharing, Stock Bonus, Stock Option or Similar Benefit Plans. The notice filed pursuant to Section 23-42-503(a)(8) of the Act for those plans not meeting the requirements of qualification under the Internal Revenue Code shall contain the following:
 - (a) A declaration that Section 23-42-503(a)(8) is applicable;
 - (b) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used.
- (9) Securities Exempted by Rule Pursuant to Section 23-42-503(a)(9) of the Act. The following securities have been determined by the Commissioner to be exempt from the registration requirements of the Act. In addition, any individual who represents an issuer in effecting transactions in securities exempted under subsections (a) through (h) below shall not be deemed to be an agent if the transaction involves offers or sales to existing security holders of the issuer and no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this state.
 - (a) Any security listed or approved for listing upon its issuance on the following exchanges:
 - (i) Chicago Stock Exchange, Inc.
 - (ii) CME Group, Inc.
 - (iii) NYSE Group, Inc.
 - (iv) The Chicago Board Options Exchange, Incorporated.
 - (v) Any other stock exchange approved by the Commissioner
 - (b) Securities listed on Tier I of the NASDAQ OMX PHLX.

- (c) Options traded on the NASDAQ OMX PHLX that are issued by the Options Clearing Corporation.
- (d) Any security of an issuer which is of senior or substantially equal rank to a security of the same issuer listed in subsections (a), (b) or (c) above.
- (e) Any security called for by subscription rights or warrants that are exempt under subsections (a), (b), (c), or (d) above.
- (f) Any warrant or right to purchase or subscribe to any security that is exempt under subsections (a), (b), (c), (d) or (e) above.
- (g) Any warrant or right to purchase or subscribe to any security that is covered pursuant to Section 18(b)(1) of the Securities Act of 1933.
- (h) Any security called for by a subscription right or warrant that is covered pursuant to Section 18(b)(1) of the Securities Act of 1933.
- ~~(h)~~ (i) Any security issued under a written compensatory benefit plan or contract that is exempt from registration under Rule 701 under the Securities Act of 1933.

(B) SECURITIES EXEMPTED UNDER SECTION 23-42-503(b).

Pursuant to Section 23-42-503(b) of the Act the following securities offered for sale or sold in Arkansas in an aggregate amount not exceeding the gross amount as set forth in Section 23-42-503(b) of the Act during the period of the offering or any consecutive twelve month period, whichever shall first occur, shall be exempt from Sections 23-42-501 and 23-42-502 of the Act.

- (1) Small Business Offering.
 - (a) All of the following requirements must be complied with prior to offering the securities in this state:
 - (i) A filing fee of one hundred dollars (\$100.00) shall be paid as set forth in Section 23-42-503(d)(5) of the Act.
 - (ii) A proof of exemption shall be filed that sets forth the means whereby each of the requirements of subsections (iv) through (vi) of this rule are to be satisfied and that declares that an exemption is claimed under this Rule.

- (iii) An opinion of counsel or other satisfactory evidence shall be presented to the Commissioner that the securities proposed to be sold pursuant to this exemption:
 - (A) Shall be offered and sold in compliance with or pursuant to appropriate exemption from all applicable registration requirements under federal securities laws; and
 - (B) Will be legally issued, fully paid, and nonassessable, and if a debt security, a binding obligation of the issuer.
- (iv) The issuer shall furnish (in a form satisfactory to the Commissioner) each prospective purchaser of the securities proposed to be sold pursuant to this exemption:
 - (A) A prospectus which contains full disclosure of all material facts relating to the issuer and the offering and sale of the securities. A prospectus meeting the requirements of Form U-7, SCOR, or other uniform forms deemed acceptable to the Commissioner will generally meet the requirements for disclosure.
 - (B) A balance sheet of the issuer as of a date within four months prior to the filing of the proof of exemption and a profit and loss statement for the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for a period of this issuer's and any predecessor's existence if less than two years, all prepared in accordance with generally accepted accounting principles. Financial statements meeting the requirements of SCOR or Regulation A will be deemed acceptable to the Commissioner.
 - (C) If over fifty percent of the proceeds from the sale of securities sold pursuant to this exemption are to be applied to the purchase of any business, the issuer shall furnish the same financial statements that would be required if the business were the issuer; and

- (v) A copy of any ~~offering circular, pamphlet, form letter, advertisement, television script, radio script, public advertising~~ or other sales literature intended as of the effective date to be used in connection with the offering is filed with the Commissioner.
- (vi) The issuer shall file the consent to service of process required by Section 23-42-107(a) of the Act, the documents required to be filed by Section 23-42-403(b)(13) and (15) of the Act, the information specified in Section 23-42-404(c)(1), (2) and (3) of the Act and a written acknowledgment executed by each executive officer, director and controlling person of the issuer that such person:
 - (A) Has made a diligent inquiry of the affairs of the issuer;
 - (B) Is personally familiar with the financial condition, operations, manner in which the offering is proposed to be effected, and salient risk features of the issuer's securities proposed to be sold pursuant to this exemption;
 - (C) After review of the documents required pursuant to this Rule, believes to his best knowledge that all such materials are true, accurate and complete; and
 - (D) Is aware of the criminal and civil liabilities provisions of Sections 23-42-104 through 23-42-106 of the Act, as amended.
- (b) In addition to the requirements set forth in subsection 503.01(B)(1)(a), the following shall also be met or apply to offerings under this Rule:
 - (i) The purchase of all such securities shall be evidenced in writing by a form affixed to the purchaser's copy of such materials whereby the purchaser represents and acknowledges receipt and review thereof prior to the consummation of the sale, the resident address of such purchaser and the date of execution thereof, which detached receipt ~~form~~ from the issuer shall retain for a period of not less than five years thereafter.

- (ii) The requirements of Rule 404 shall apply to offerings of securities pursuant to this exemption unless the Commissioner waives any or all of such requirements.
 - (iii) The issuer undertakes during the period of the offering to promptly file an amendment to the proof of exemption any time anything previously filed with the Commissioner in connection with the offering becomes outdated, incorrect, inaccurate, modified or otherwise changes in any material respect.
 - (iv) This exemption shall become effective only when the Commissioner so indicates by written confirmation signifying effectiveness.
 - (v) The exemption from Sections 23-42-501 and 23-42-502 of the Act shall only be effective for the period of the offering or twelve months from the date it is declared effective, whichever shall first occur.
 - (vi) The exemption for any issue of securities may be denied, suspended or revoked for any of the reasons set forth in Section 23-42-405.
 - (vii) In connection with the sale of the security, no commission or other remuneration shall be paid or given, directly or indirectly, for soliciting any prospective purchaser in this State unless registered as a broker-dealer or agent of the issuer.
- (2) Small Real Estate Investment Oriented Securities Offering. A security representing an investment in real estate, offered in compliance with each of the following conditions shall be exempt under Section 23-42-503(b) of the Act.
- (a) The total purchase price of the real property including all fees, commissions, and notes or other evidences of indebtedness, but excluding points and prepaid interest, shall not exceed the limitation set forth in Section 23-42-503(b) of the Act.
 - (b) There shall be no more than ten persons as investors of the offering. For purposes of computing the number of investing persons:
 - (i) All persons who invest as organizers shall be included;

- (ii) There shall be counted as one person each corporation, partnership, association, joint stock company, trust or unincorporated organization, except that if such entity was organized for the specific purpose of acquiring the securities offered, then this exemption shall not be available to the claimant; and
- (c) No investor shall purchase less than one-tenth (1/10) ownership in the offering.
- (d) Each investing person shall take title to the real estate in his own name as a tenant in common.
- (e) The sponsor or organizer must reasonably believe that each investor is able to bear the economic risk of the investment. It shall be prima facie evidence of compliance of this element if each investing person demonstrates in writing prior to consummation of sale that he is able to bear the economic risk of the investment.
- (f) The sponsor or organizer must reasonably believe that each investor is purchasing for investment. It shall be prima facie evidence of compliance of this element if each investment person demonstrates in writing prior to consummation of sale that he is purchasing for investment and not with a view to distribution.
- (g) In connection with the sale of the security, no commission or other remuneration shall be paid or given, directly or indirectly, for soliciting any prospective purchaser in this State, except a standard real estate brokerage commission or securities commission or securities commission that is reasonable, customary, and competitive in light of the size, type, and location of the property shall be permitted provided that:
 - (i) The real estate commission is paid to a registered Arkansas Real Estate Broker or the broker's agent; and,
 - (ii) In no event shall such commission exceed ten percent of the total purchase price of the property.

(C) SECURITIES EXEMPTED UNDER SECTION 23-42-503(c) OF THE ACT.

The proof of exemption required to be filed pursuant to Section 23-42-503(d) of the Act, and that may be filed by farm cooperatives pursuant to Section 23-42-503(c) of the Act, shall contain the following unless waived by the Commissioner:

- (1) The filing fee as set forth in Section 23-42-503(d)(5) of the Act;

- (2) A declaration that the Section 23-42-503(c) exemption will be utilized;
- (3) A copy of the Articles of Incorporation and Bylaws of the issuer;
- (4) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;
- (5) Current financial statements of the issuer;
- (6) A copy of the subscription agreement or other similar agreement;
- (7) A representation that no commissions or other remuneration will be paid in connection with the offer or sale of the securities.
- (8) Any additional information or documentation which the Commissioner may require.

503.02 GENERAL PROVISIONS.

- (A) **QUALIFICATION.** In order to qualify for an exemption, each applicant must meet each of the ~~technical~~ requirements of the particular exemption claimed under Section 23-42-503 of the Act. A failure to comply with any one material ~~technical~~ element will render that exemption unavailable to the claimant. The burden of proof for an exemption under Sections 23-42-503 of the Act shall be on the claimant.
- (B) **FILING.** Certain exemptions set forth in Section 23-42-503 of the Act and the corresponding Rules first require a filing with the Department as the initial step in the exemption process. These exemptions are unavailable unless the required filing is made.
- (C) **REQUIREMENTS.** The Securities Commissioner will look with disfavor upon any exemption request under Section 23-42-503 of the Act as not being in the public interest and tending to work a fraud on investors, unless the requirements set forth in the Act and Rules are met, or good cause is shown for an exception from such applicable requirements. A request for deviation from exemption policies must be in writing and if not acceptable, the request will be denied.
- (D) **RECORDS.** All issuers who effect sales or offers of securities pursuant to the exemption specified in Section 23-42-503 when a proof of exemption is filed, shall preserve the following records during the period of five years following the completion of the sales.
 - (1) A copy of the proof of exemption and all exhibits thereto;

- (2) A copy of all literature by which the issuer made disclosure to offerees of the offers for sale;
 - (3) Original copies of all communications received and copies of all communications sent by the issuer pertaining to the offer, sale, and transfer of the securities, including purchase agreements and confirmations; and,
 - (4) A list of the names and addresses of all persons to whom the securities were sold, the type and amount of securities sold to each, the consideration paid or promised by each, the method of payment (for example, cash, check, property, services, or promissory note), and the name of each person or persons who represented the issuer in effecting each sale.
- (E) **AGENT REQUIREMENTS.** Any person who effects transactions in securities of an issuer exempted by Sections 23-42-503(a)(5) through (7) is an agent. Any person who effects transactions in securities exempted by Section 23-42-503(c) where a commission or other remuneration is to be paid is an agent.
 - (1) All agents are required to be registered.
 - (2) If the agent is not associated with a broker-dealer registered in Arkansas, the person must become registered as an agent for the issuer. Section 23-42-301 of the Act sets forth the requirements for the registration of such an agent(s).
- (F) **CONFIRMATIONS.** At or before completion of each transaction with a purchaser, the agent of the issuer shall give or send to each purchaser written notification of the following information (if such information is not included in the subscription agreement):
 - (1) The date the transaction took place and the date or dates payments are made by the purchaser;
 - (2) The identity of the registered agent handling the transaction;
 - (3) Any other information required or deemed material to the transaction such that the failure to disclose such information would be misleading to the purchaser or would not accurately represent material facts to the transaction. Such information should include, at a minimum, a full description of the security.
- (G) **DENIAL OR REVOCATION.** If an applicant has filed for an exemption pursuant to Section 23-42-503 of the Act, and if the Commissioner deems it necessary, he may by order summarily deny or revoke any exemption pending a

final determination of any proceeding under Rule ~~605~~ 606 or Section 23-42-505 of the Act.

- (H) **PERIOD OF EFFECTIVENESS.** Except as provided by specific statute, rule, or order, or unless the exemption is revoked, securities for which a proof of exemption was filed pursuant to Sections 23-42-503(a)(7) or 23-42-503(c) of the Act may be issued as exempt securities during the twelve month period following the effective date.

RULE 504 EXEMPTED TRANSACTIONS.

THESE RULES DO NOT EXEMPT SUCH TRANSACTIONS FROM THE REMAINING PROVISIONS OF THE ACT OR THESE RULES, INCLUDING SECTION 23-42-507 OF THE ACT.

RULE 504.01 TRANSACTIONS EXEMPT UNDER SECTION 23-42-504(a) OF THE ACT.

(A) SPECIFIC TYPES OF EXEMPT TRANSACTIONS.

- (1) Isolated Non-Issuer. See definition of non-issuer, issuer and underwriter in the Act and Rules. An “isolated non-issuer transaction” within the meaning of this Rule 504.01(A)(1) includes:
 - (a) Any sale of an outstanding security by or on behalf of a person not in control of the issuer or controlled by the issuer or under common control with the issuer and not involving a distribution; and
 - (b) ~~That there~~ There are no more than three such transactions effected ~~by or through a broker-dealer~~ in this state during any twelve months-period.
- (2) Manual Exemption.
 - (a) The following will be considered recognized manuals, including the electronic formats on CD-ROM and the Internet:
 - (i) Standard & Poor's Standard Corporation Records
 - (ii) Mergent's Industrial Manual
 - (iii) Mergent's Bank and Finance Manual
 - (iv) Mergent's Municipal and Government Manual

- (v) Mergent's Transportation Manual
- (vi) Mergent's Public Utility Manual
- (vii) Mergent's OTC Industrial Manual
- (viii) Mergent's International Manual
- (b) Supplements to the above recognized manuals are recognized, provided that the necessary information required by the Act is disclosed and the supplements are subsequently incorporated and published in the respective annual manual.
- (c) The distribution of large blocks of securities by controlling persons in firmly underwritten offerings will ordinarily be presumed to be for the direct or indirect benefit of the issuer, and not within the provisions of the manual exemption.
- (3) Sale to Underwriter.
- (4) Secured Transactions. This exemption applies only when the mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby are offered and sold as a whole unit. Fractional interests or undivided interests in the unit may not be offered or sold in reliance on this exemption.
- (5) Fiduciary Transactions. **[RESERVED]**
- (6) Pledges. **[RESERVED]**
- (7) Cross Border Transactions. **[RESERVED]**
- (8) Sales to Institutional Buyers. **[RESERVED]**
- (9) Small Private Offerings.
 - (a) The proof of exemption required to be filed with the Commissioner under Section 23-42-504(b) of the Act, where a seller claims an exemption under Section 23-42-504(a)(9) of the Act, shall contain the following unless waived by the Commissioner:
 - (i) The filing fee as set forth in Section 23-42-504(b)(4) of the Act;
 - (ii) A declaration that Section 23-42-504(a)(9) of the Act is applicable;

- (iii) A representation that sales will be made to not more than thirty-five unaccredited purchasers other than those designated in Section 23-42-504(a)(8) of the Act during any period of twelve consecutive months;
 - (iv) A representation that no commission or other remuneration will be paid or given directly or indirectly for soliciting any prospective buyer in Arkansas unless the person receiving any such commission or remuneration is registered as a broker-dealer or agent of the issuer;
 - (v) A representation that the seller believes that all the buyers in Arkansas are purchasing for investment;
 - (vi) A representation that each buyer will sign an appropriate "investment intent letter," a copy of which shall be included in the proof of exemption, stating in part that the buyer is not taking with a view to distribution;
 - (vii) A representation that certificates to be issued will bear an appropriate restrictive legend, a copy of which shall be submitted with the proof of exemption;
 - (viii) A copy of the Articles of Incorporation, partnership agreement, limited partnership agreement, and all other entity governance documents that reflect the rights of the security holders;
 - (ix) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;
 - (x) A representation that no public advertising or solicitation will be employed in effecting the proposed transaction;
 - (xi) Current financial statements of the Issuer, if any;
 - (b) The investment may not exceed ten percent of any unaccredited purchaser's net worth (net worth excludes home, furnishings, and automobiles).
 - (c) Any additional information or documentation which the Commissioner may require.
- (10) Sales to Existing Security Holders.

- (a) A proof of exemption filed pursuant to Section 23-42-504(a)(10) of the Act shall contain:
 - (i) The filing fee as set forth in Section 23-42-504(b)(4) of the Act.
 - (ii) A statement of which registration or exemption section was utilized in placing the original securities with the existing security holders.
 - (iii) A description of the method by which full disclosure of material facts will be made to each offeree. A copy of the prospectus, pamphlet, offering circular, or similar literature should be provided, if one is to be used;
 - (iv) A representation that no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in Arkansas unless waived by the Commissioner.

(11) Red Herring Offers. **[RESERVED]**

(12) Discretionary Exemptions. The following transactions have been determined by the Commissioner to be exempt from the registration requirements of Section 23-42-501 of the Act, such registration having been found to be not necessary or appropriate in the public interest or for the protection of investors. These transactions are not exempt from the remaining provisions of the Act or these Rules, including Section 23-42-507 of the Act.

- (a) BUSINESS ORGANIZATION. Where seven or fewer persons form, incorporate or each otherwise organize a corporation, joint venture, limited liability company, limited liability partnership, or general or limited partnership, provided:
 - (i) Each person purchases from the issuer with investment intent and not with a view to distribution. ~~Issuer shall exercise reasonable care to assure this investment intent, which reasonable care shall be presumed if reasonable inquiry is made of the purchaser to determine acquisition of securities is for himself or for other persons, written disclosure to each purchaser prior to sale that the securities have not been registered under the Act, and therefore, cannot be resold unless they are registered under the act or unless an exemption from registration is available, and placement of a legend on the certificate or other document that evidences the securities stating that~~

~~the securities have not been registered under the act and setting forth or referring to the restrictions on transferability and sale of securities;~~

- (ii) Each purchaser is an organizer on the date the issuer is formed, not including the initial limited partner of a limited or general partnership who withdraws and is replaced by the organizing limited partners;
 - (iii) Each purchaser has access to information concerning the issuer;
 - (iv) In connection with the organization, no commission or other remuneration is paid or given directly or indirectly to any person for soliciting any prospective buyer in Arkansas; and
 - (v) No public advertising ~~through newspapers, television, radio, handbills~~ or other such solicitation will be employed in effectuating the proposed transaction.
- (b) **ADDITIONAL SALES BY AN EXISTING ISSUER.** Any sale by an issuer to twelve or fewer purchasers provided that such sale complies with each of the following:
- (i) No commission or other remuneration is paid or given directly or indirectly to any person for the sale of the security;
 - (ii) The security:
 - (A) is sold exclusively to existing security holders and the issuer reasonably believes that each purchaser is purchasing with investment intent; or
 - (B) the security is offered or sold to not more than five additional purchasers provided that in no event shall the total number of security holders of the issuer exceed twelve on consummation of the last sale and the issuer shall reasonably believe that each purchaser is purchasing with investment intent;
 - (iii) Each purchaser has access to information concerning the issuer prior to consummation of sale;

- (iv) For purposes of computing the number of security holders in this transactional exemption, security holders who have been issued securities pursuant to Sections 23-42-504(a)(5) and 23-42-504(a)(8) of the Act shall not be counted; and
 - (v) This exemption shall not be available to an issuer that has not been organized or its securities have not been previously issued in compliance with Section 23-42-501 of the Act.
 - (vi) No public advertising or other solicitation will be employed in effectuating the proposed transaction.
- (c) **PROFESSIONAL CORPORATION OR PROFESSIONAL LIMITED LIABILITY COMPANY.** Any security issued by a professional corporation organized under the Arkansas Medical Corporation Act, the Arkansas Dental Corporation Act and the Arkansas Professional Corporation Act, or a limited liability company formed under the Arkansas Small Business Entity Tax Pass Through Act that performs professional services, provided;
- (i) The professional corporation or limited liability company complies with the ownership and retransfer restrictions as set forth in the professional corporation Acts or the Small Business Entity Tax Pass Through Act;
 - (ii) The securities are sold to a professional person;
 - (iii) The seller reasonably believes that each buyer is purchasing for investment; and
 - (iv) Each professional is provided access to information concerning the professional corporation or limited liability company.
 - (v) No public advertising or other solicitation will be employed in effectuating the proposed transaction.
- (d) **LIMITED OFFERING OF OIL, GAS, AND OTHER MINERAL INTERESTS UNDER SELECT CONDITIONS.** Any offer ~~and~~ or sale of an interest in or under an oil, gas, or mining lease, or title, or payments out of production in or under such leases, titles, or contracts relating thereto by the issuer or an agent for the issuer provided the following conditions are met:

- (i) The offer or sale is made to persons or companies, each of which the issuer or issuer's agent reasonably believes is:
 - (A) Engaged in the business of exploring for or producing oil, gas, or other minerals as an ongoing business or is engaged in the practice of a profession or discipline that is directly related to the exploration for, production of, refining of, or marketing of oil, gas, or other minerals such as the interest being sold; or
 - (B) A landman, drilling company, well service company, production company, refining company, geologist, geophysicist, petroleum engineer, or earth scientist; or
 - (C) An executive officer of a company whose primary business involves one of the activities listed in subparagraphs (i)a. or (i)b. immediately preceding this subparagraph; or
 - (D) a sophisticated investor who the issuer and any person acting on its behalf in the offer or sale of the securities or interests reasonable believes that:
 - (1) Immediately prior to making any offer or sale, the prospective investor has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil, gas, or other mineral investments;
 - (2) Each purchaser is able to bear the economic risk of the investment. For purposes of determining the ability to bear the economic risk, investors who qualify as accredited investors shall be deemed to be able to bear the economic risks of the investment; and
 - (3) Each purchaser has access to information concerning the issuer. The disclosure information provided to investors shall be reasonably adequate in light of the circumstances and conditions then existing

between the parties at the date of consummation of the sale.

- (ii) the issuer or issuer's agent reasonably believes that each purchaser is purchasing for investment and not with a view for resale, and each investor must represent in writing that he understands that he cannot resell his security or interest without registration or other compliance with the state and federal securities laws; provided, however, that sales may be made exclusively by and between those persons described in subparagraphs (i)a., (i)b. or (i)c. above, for purposes of assembling leases or other rights for oil and gas production or exploration
- (iii) no commission or other remuneration shall be paid or given directly or indirectly for soliciting any prospective investor unless the person receiving any such commission or other remuneration is registered as a broker-dealer or agent of the issuer; and
- (iv) neither the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's officers, directors, general partners, any beneficial owners of ten percent or more of any class of the issuer's equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, nor any partner, director nor officer of such underwriter:
 - (A) within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state or federal securities regulator;
 - (B) has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;
 - (C) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the offer, sale or purchase of any security; or
 - (D) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered

within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the offer, sale or purchase of any security.

- (e) OIL AND GAS AUCTIONS. The offer and sale of a mineral interest at an auction, provided each offer and sale complies with each of the following:
 - (i) Mineral Interest. For purposes of this rule only, gas, or mining lease, fee, or title, including real property from which the minerals have not been severed, or contracts relating thereto.
 - (ii) Auction. For purposes of this rule only, "auction" shall mean the offer and sale of the mineral interest of the seller by public outcry through an auctioneer.
 - (iii) Auctioneer. The auctioneer or auction company through which the mineral interest is offered or sold must be registered as a broker-dealer under the Act.
 - (iv) Seller.
 - (A) Unless the seller did not acquire the mineral interest with a view to resale or was forced to acquire the mineral interest. The seller must be registered as a broker-dealer under the Act.
 - (B) The interests being auctioned are not "fractionalized" or converted into undivided interests in the mineral interests for the purpose of resale at auction. The seller is required to offer its entire ownership of the mineral interests being offered for sale; however, the seller shall not be considered to be fractionalizing its interest in sales where the seller horizontally severs the property by retaining all of its existing rights in certain formations or depths under the whole property.
 - (C) The auctioneer shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the seller satisfies the requirements set forth in (a) and (b) of this paragraph. This requirement could be met by obtaining a document

signed by the seller to the effect that the seller meets these conditions.

- (v) Purchaser.
 - (A) The purchaser or its representative is engaged in the business of exploring for or producing oil, gas, or other minerals as an ongoing business. By reason of this knowledge and experience, the purchaser or its representative has evaluated the merits and risks of the mineral interest to be purchased at auction and has formed an opinion based solely upon his knowledge and experience and not upon any statement, representation or printed material provided or made by auctioneer or seller; or,
 - (B) The purchaser must be an Accredited Investor.
 - (C) In all sales to purchasers in this state, the seller or any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the purchaser satisfies the requirements set forth in a. or b. of this paragraph. This requirement can be met by obtaining a document signed by the purchaser to the effect that the purchaser meets these conditions.
 - (D) There must be only one purchaser for each interest offered and sold. A purchase by a husband or wife in the joint names of both husband and wife shall be deemed to be a single purchaser.
 - (E) If a purchaser representative is used, such purchaser representative shall have no business relationship with the seller, shall represent only the purchaser and not the seller, and shall be compensated only by the purchaser.
- (vi) With respect to each mineral interest offered or sold at auction, the seller must make available all material information to the prospective and actual purchasers of said interests.
- (vii) The seller or the auctioneer must record, or in the alternative, must deliver to the purchaser the documents or notices necessary for the purchasers themselves to record,

evidence of lawful conveyance of said interests to the purchaser.

- (viii) All payments for mineral interests sold at auction shall be made by the purchasers to the appropriate parties and will be held until closing.
 - (ix) The only compensation received by the auctioneer shall be a commission based on the sales of the mineral interests.
- (f) **INSURED SAVINGS, CERTIFICATE, PASSBOOK AND OTHER SIMILAR INSURED ACCOUNTS.** Any savings, passbook, certificate and other similar accounts insured in whole or in part by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
- (g) **ORGANIZATION AND ADDITIONAL CAPITALIZATION OF WHOLLY OWNED SUBSIDIARY.** Where the offer and sale of securities is by a wholly owned subsidiary to its parent for purposes of organizing or placing additional capital in such wholly owned subsidiary provided each such sale or additional capitalization complies with the following:
 - (i) The securities are purchased for investment and not with a view to distribution; and,
 - (ii) The securities bear an appropriate restrictive legend.
- (h) **CLASS VOTE.** Any transaction incident to a class vote by security holders or members, pursuant to the certificate of incorporation, organizational document or the applicable statute on a merger, consolidation, reclassification of securities, sale of assets in consideration of the issuance of securities of another entity, or reorganization.
- (i) **INVESTMENT CLUB.** The sale by an investment club of beneficial interests for not more than fifty thousand dollars (\$50,000.00) in any one year in contributions, for the purpose of investing and reinvesting such proceeds in securities, provided there is compliance with each and every one of the following conditions:
 - (i) The organization is one, incorporated or unincorporated, partnership or association, composed of not more than twenty-five members, each of whom are natural individuals, who for their education and benefit,

periodically or initially pay in sums of money to invest in securities which are held in a fund beneficially owned by those individuals in relative proportion as determined by the value of their payments.

- (ii) The structure of the organization shall be evidenced by a written instrument, setting forth the rights and obligations of the members, a copy of which shall be furnished to each member.
- (iii) Broker-Dealers or registered agents of broker-dealers who may be members of the club shall certify that this is the only investment club to which they belong. Such broker-dealer or registered agent may not be the organizer or promoter of the club. A broker-dealer or registered agent who is a member of the club may not himself receive a fee or commission for sales of securities to the club; however, the broker-dealer may receive a commission.
- (iv) Voting shall be based either upon each member's proportionate interest in the entire assets of the club, or upon one vote for each member of the club.
- (v) Club decisions will require a majority vote at the meeting authorized by the club's bylaws, determined either by a majority in interest of the total interest of the members present, or by a majority of the members present.
- (vi) No member shall own beneficially more than thirty-three percent (33%) of the club's entire assets.
- (vii) Adequate books of account of the transactions of the investment club shall be kept and be available and opened to inspection and examination by any member at each meeting.
- (viii) Such sales are made in good faith and not for the purpose of avoiding the provisions of the Act.
- (ix) This exemption shall not be available to any club, if it, any officer, director, promoter, sponsor, operator, organizer or agent of such club or other authorized person participating in the process of offering or selling such securities shall have been the subject of:

- (A) any administrative order issued under any state or federal securities law or regulation or a postal fraud order;
 - (B) any outstanding injunction consent or otherwise for a securities violation of any state or federal securities law or regulation; or,
 - (C) any court decision granting civil relief for a securities violation of any state or federal securities law or regulation; or shall have been convicted of any violation of the federal securities or postal laws or regulations, the securities laws of any state, or criminal fraud.
- (x) No member of the club may receive a fee, commission, profit, or other remuneration for selling an investment to the club unless the member shall first disclose in writing such to the other members and receive prior written approval from each member.
- (xi) No public advertising or other solicitation will be employed in effectuating the proposed transaction.
- (j) DEFERRED COMPENSATION PLANS. Transactions entered into in connection with certain types of deferred compensation plans ("Deferred Compensation Plans"), those transactions shall be exempt from Sections 23-42-501 and 23-42-502 of the Act.
- (i) Contributions and Purchases of Securities Regarding §401 of the I.R.C. Plans. Any transaction whereby: (1) an issuer or an affiliate of the issuer ("affiliate") contributes any security of the issuer or affiliate to a §401 Plan or; (2) a §401 Plan purchases any security of the issuer or affiliate with cash or other property which has been contributed to the §401 Plan by the issuer or affiliate.
 - (ii) Allocation of "Phantom Stock Plan" Units. Any transaction whereby an issuer allocates §401 of the I.R.C. Plan benefits in the form of "units" or otherwise representing a right eventually to receive cash (but not stock) measured by dividends paid on shares of capital stock of the issuer or the market value of shares of capital stock of the issuer or both in so-called "phantom stock plan".

- (iii) **Governmental Plans.** The offer or sale of any interest, participation or investment contract in connection with a Deferred Compensation Plan established or administered by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing.
 - (iv) **Tax Exempt Organization Plans.** The offer or sale of any interest, participation or investment contract in connection with a Deferred Compensation Plan established or administered by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purpose, or as a chamber of commerce or trade or professional association.
 - (v) **Unfunded Plans.** The offer or sale of any interest, participation, or investment contract in connection with a Deferred Compensation Plan established primarily for a select group of management or highly compensated employees or agents and which does not provide for the contribution of funds to a trust or other legally separate fund but is rather carried as a general obligation of the establishing entity.
- (k) **SECURITY HOLDER AGREEMENT.** Any offer, sale, purchase or other transaction between a corporation, limited liability company, limited liability partnership, limited partnership, joint venture or partnership and its security holders or among the security holders themselves in connection with a written agreement between such persons concerning the buy-back, sale, exchange or other contractual agreement of the security holders' interest that has been entered into prior to or at the time of the transaction provided:
- (i) There are no more than thirty-five persons party to the agreement;
 - (ii) Each person acquiring the security has access to information concerning the issuer at the time of entering into the agreement; and,
 - (iii) No commission or other remuneration is paid or given directly or indirectly to any person for the sale, disposition or transfer of the security.

- (iv) The underlying securities when issued were registered or exempt from registration under the Act.
- (l) 100% SALE OF A BUSINESS. Any transaction pursuant to the one hundred percent (100%) sale of securities of a business entity provided:
 - (i) There are no more than seven purchasers;
 - (ii) Each person purchases with investment intent and any certificates issued will bear an appropriate restrictive legend;
 - (iii) Each person has access to information concerning the issuer;
 - (iv) In connection with the transaction, no commission or other remuneration is paid or given directly or indirectly to any person, other than a business broker acting as such and meeting the conditions set forth in Rule 102.01(17), for soliciting any prospective purchaser; all parties have had the opportunity to consult with counsel.
- (m) AFFILIATE EXCLUSION – CONTROL PERSON.
 - (i) Any sale of an outstanding security by or on behalf of a person in control of the issuer, or controlled by the issuer, or under common control with the issuer, that complies with SEC Rule 144 under the Securities Act of 1933.
 - (ii) Any ~~transaction pursuant to the~~ sale of an outstanding security by or on behalf of a person in control of the issuer, or controlled by the issuer, or under common control with the issuer, provided the sale does not involve a public offering and is effected pursuant to the following:
 - (A) Resale purchasers must be solicited directly by the holder of the stock, not by the ~~issuing entity~~ issuer;
 - (B) ~~Resale purchasers~~ Control person sellers are limited to no more than three transactions involving the same security within a twelve month period;
 - (C) Resale purchasers must be provided with full disclosure of the type of information found in a registration statement on a form that the issuer

would be eligible to use or Private Placement Memorandums;

- (D) The resale must include the typical characteristics of a private placement, ~~including disclosure of company information and,~~ including compliance with the purchaser qualification requirements of sophistication and ability to bear risk; ~~or and~~
 - (E) The ~~holder~~ control person seller must demonstrate that he/~~she~~ is not making the sale with a view ~~to~~ toward distribution of securities and not on behalf of the issuer ~~company~~. This is typically done by having the resale purchaser make investment representations similar to those ~~originally~~ typically required ~~by the issuer company in a private placement of securities.~~
- (n) LIFE SETTLEMENTS CONTRACT. Any offer or sale of a life settlements contract if:
- (i) The underlying life settlement transaction with the insured was in compliance with the Life Settlements Act, Ark. Code Ann. Sections 23-81-801 through 23-81-818;
 - (ii) The life settlements contract contains a provision providing for a right of rescission within fifteen (15) days of the date the last required disclosure document is delivered to the purchaser or the date the purchaser paid the purchase price for the life settlements contract, whichever is later; and
 - (iii) The following disclosure documents published by the Commissioner are delivered as follows:
 - (A) Life Settlements Disclosure Document I is delivered to a prospective purchaser initially, within seven days after the first contact by the person selling the life settlements contract.
 - (B) Life Settlements Disclosure Document II is delivered to a purchaser within fifteen days after the purchaser's check is delivered or the purchaser's funds are otherwise made available to the seller for purchase.

- (o) **ACCREDITED INVESTORS.** Certain offers and sales of securities sold to Accredited Investors if in compliance with the NASAA Model Accredited Investor Exemption.
- (p) **CHARITABLE ORGANIZATIONS.** The Commissioner, having found that the enforcement of the registration provisions of the Act are not necessary for the protection of investors or in the public's interest, with respect to certain transactions entered into with any offer or sale of securities by an issuer who is a charitable organization that maintains certain charitable funds, the following transactions shall be exempt from Sections 23-42-501 and 23-42-502 of the Act provided that:
 - (i) the sale involves securities issued by, or any interest or participation in, any charitable fund maintained by a company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act, or other offer or sale thereof.
 - (ii) each charitable fund should provide, to each donor to such charitable fund, at or before the time of the donation, written information containing the information required by Section 7(e) of the Investment Company Act.
 - (iii) provide a copy of such written information to the Commissioner within ten (10) days following a written request.
 - (iv) For purposes of this exemption:
 - (A) **AGENT REQUIREMENTS.** Any person who represents an issuer in effecting transactions in securities exempted under this subchapter is not an agent if the person soliciting donations on behalf of the charitable organization to a charitable fund is either a volunteer or is engaged in the overall fund raising activities of the charitable organization and receives no commission, remuneration, or other special compensation, directly or indirectly, based on the number or the value of donations collected for the charitable fund.
 - (B) **INVESTMENT ADVISER.** For purposes of this exemption, an investment adviser does not include:

- (1) any person that is a charitable organization where no part of the net earnings of the charitable organization or fund inures to the benefit of any private shareholder or individual.
- (2) any person that that is a charitable organization offering a charitable fund whose securities are exempt under this rule.
- (3) any person that is a trustee, officer, employee, or volunteer of a charitable organization described in subsections (v)(a) and (v)(b) acting within the scope of such person's employment or duties with such a charitable organization, whose advice, analysis or reports are provided to one or more of the following:
 - (a) any such charitable organization;
 - (b) a charitable fund whose securities are exempt under this rule.
 - (c) a trust or other donative instrument whose securities are exempt under this rule or the trustees, administrators, settlors (or potential settlors) or the beneficiaries of any such trust or instrument.

(B) PROOF OF EXEMPTION. Section 23-42-504(b) of the Act establishes filing requirements for certain exempt transactions. A filing shall be deemed incomplete until all information is filed as required by the appropriate Rule. Before any transaction is entered into pursuant to Sections 23-42-504(a)(9) or (10) of the Act, a proof of exemption must be filed with the Commissioner and not disallowed within the following ten business days.

504.02 GENERAL PROVISIONS.

(A) QUALIFICATION. In order to qualify for an exemption, each applicant must meet each of the ~~technical~~ requirements of the particular exemption claimed under Section 23-42-504 of the Act. A failure to comply with any one material ~~technical~~ element will render that exemption unavailable to the claimant. The burden of proof for an exemption under Sections 23-42-504 of the Act shall be on the claimant.

- (B) **FILING.** Certain exemptions set forth in Section 23-42-504 of the Act and the corresponding Rules first requires a filing with the Department as the initial step in the exemption process. These exemptions are unavailable unless the required filing is made.
- (C) **REQUIREMENTS.** The Securities Commissioner will look with disfavor upon any exemption request under Section 23-42-504 of the Act as not being in the public interest and tending to work a fraud on investors, unless the requirements set forth in the Act and Rules are met, or good cause is shown for an exception from such requirements. Request for deviation from exemption requirements must be in writing and if not acceptable to the Commissioner, the request will be denied.
- (D) **RECORDS.** All issuers who effect sales or offers of securities pursuant to the exemption specified in Section 23-42-504 when a proof of exemption is filed, shall preserve the following records during the period of five years following the completion of the sales.
- (1) A copy of the proof of exemption and all exhibits thereto;
 - (2) A copy of all literature by which the issuer made disclosure to offerees of the offers for sale;
 - (3) Original copies of all communications received and copies of all communications sent by the issuer pertaining to the offer, sale, and transfer of the securities, including purchase agreements and confirmations; and,
 - (4) A list of the names and addresses of all persons to whom the securities were sold, the type and amount of securities sold to each, the consideration paid or promised by each, the method of payment (for example, cash, check, property, services, or promissory note), and the name of each person or persons who represented the issuer in effecting each sale.
- (E) **AGENT REQUIREMENTS.** Any person who effects transactions in securities exempted by Section 23-42-504(a)(9) where a commission or other remuneration is to be paid is an agent.
- (1) All agents are required to be registered.
 - (2) If the agent is not associated with a broker-dealer registered in Arkansas, the person must become registered as an agent for the issuer. Section 23-42-301 of the Act sets forth the requirements for the registration of such an agent(s).

- (F) **CONFIRMATIONS.** At ~~or before~~ completion of each transaction with a purchaser, the Agent of the Issuer shall give or send to each purchaser written notification of the following information (if such information is not included in the subscription agreement):
- (1) The date the transaction took place, the date or dates payments are made by the purchaser;
 - (2) The identity of the registered agent handling the transaction;
 - (3) Any other information required or deemed material to the transaction so that the failure to disclose such information would be misleading to the purchaser or would not accurately represent material facts to the transaction. Such information should include, at a minimum, a full description of the security.
- (G) **NUMBER OF PURCHASERS.** Unless otherwise noted, the number of persons purchasing, receiving offers or otherwise involved in an exempt transaction shall be determined as follows:
- (1) A general partnership shall not be counted as a single person, but as the total number of its partners;
 - (2) A husband and wife purchasing or acting as joint tenants or tenants by the entirety may be counted as a single person;
 - (3) A government or political subdivision of a government shall be counted as a single person;
 - (4) A trust, regardless of the number of beneficial owners, that is evidenced by an appropriate instrument declaring its creation may be counted as a single person.
 - (5) A corporation, limited partnership, limited liability company, or other legal entity required to organize, register or charter through the Secretary of State or some other state or federal agency may be counted as a single person unless, from a totality of circumstances, it appears reasonably likely that such entity was formed with the purpose, in whole or in part, to evade the registration requirements of the Act or to invest in the specific offering in question.
- (H) **DENIAL OR REVOCATION.** If applicant has filed for an exemption pursuant to Section 23-42-504 of the Act, and if the Commissioner deems it necessary, he may by order summarily deny or revoke any of the specified exemptions pending a final determination of any proceeding under Rule ~~605~~ 606 or Section 23-42-505 of the Act.

- (I) **PERIOD OF EFFECTIVENESS.** Except as provided by specific statute or Rule or unless the exemption is revoked, securities underlying a transactional exemption effected pursuant to Section 23-42-504 of the Act may be issued until such time as the transaction is complete. The maximum time period for completing a transaction is twelve months from the effective date. After the expiration of the effective period of the exemption, a new filing is required. For exemptions executed pursuant to Section 23-42-504(a)(9) of the Act, any offer or sale of additional securities during the twelve month effective period shall be considered amendments to the original statutory limitations.

RULE 505 DENIAL OR REVOCATION OF EXEMPTIONS.

505.01 RULES OF PRACTICE AND PROCEDURE REGARDING DENIAL OR REVOCATION OF EXEMPTION.

The rules of practice and procedure to be followed in any proceeding for the denial or revocation of an exemption are set forth in Chapter 6 of these Rules.

RULE 506 BURDEN OF PROOF OF EXEMPTION.

506.01 BURDEN OF PROOF EXEMPTION.

The Commissioner may not grant an exemption under this section as the claimant has the burden of proving that the security so qualifies. The proof of exemption must be complete before a subscription agreement or other contractual obligation to acquire the security is signed by either party. Indications of interest maybe solicited and obtained prior to the filing of the proof of exemption, but no offers may be accepted nor any contractual obligations entered into prior to the completion of the filing and subsequent action ~~thereof~~ thereon by the Commissioner.

RULE 507 FRAUD OR DECEIT IN CONNECTION WITH OFFER, SALE, OR PURCHASE OF SECURITIES.

[RESERVED]

RULE 508 MARKET MANIPULATION.

[RESERVED]

RULE 509 COVERED SECURITIES.

509.01 NOTICE FILINGS.

- (A) A notice filing for covered securities under Section 18(b)(2) of the Securities Act of 1933 shall contain the following:

- (1) Initial Offerings
 - (a) Fees as set forth in Section 23-42-509(a)(1) of the Act.
 - (b) Form NF. For issuers paying less than the maximum filing fee, a sales report of the amount of securities sold in this State during the filing period shall be provided on Form NF. The sales report shall be provided no later than thirty days after the issuer's fiscal year end.
 - (c) Form U-2, Uniform Consent to Service of Process.
 - (2) Renewed Offerings
 - (a) Fees as set forth in Section 23-42-509(a)(1) of the Act.
 - (b) Form NF. For issuers paying less than the maximum filing fee, a sales report of the amount of securities sold in this State during the previous filing period shall be provided on Form NF. The sales report shall be provided no later than thirty days after the issuer's fiscal year end.
 - (3) Amended Offerings
 - (a) Fees as set forth in Section 23-42-509(b) of the Act.
 - (b) Form NF.
- (B)** A notice filing for covered securities under Section 18(b)(4)(D) of the Securities Act of 1933 shall meet the following requirements:
- (1) Filing fee as set forth in Section 23-42-509(c) of the Act.
 - (2) A copy of Form D, including a copy of the state appendix, filed no later than fifteen days after the first sale in Arkansas. Any amendments to Form D filed with the SEC shall be filed concurrently with the Commissioner. Any amendments to Form D not filed with the SEC shall be filed with the Commissioner within fifteen days after the event or activity necessitating the amendment.
 - (3) Final Sales Report reflecting the final amount of sales to investors in Arkansas. For issuers paying less than the maximum filing fee, a sales report of the amount of securities sold in Arkansas during the previous filing period shall be provided to the Commissioner.

- (C) A notice filing or fee is not required for a covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, except as set forth in Rule 509.01(B).

509.02 AGENT REQUIREMENTS.

- (A) Any person who represents an issuer in effecting transactions in covered securities exempted by Section 18(b)(1) of the Securities Act of 1933 shall be registered as an agent except in the following:
- (1) Any offer or sale to existing security holders of the issuer and no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this state; or
 - (2) Any other transaction that the Commissioner may by order prescribe.
- (B) Any person who represents an issuer in effecting transactions in covered securities exempted by Section 18(b)(4)(D) of the Securities Act of 1933 is not an agent if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in Arkansas.

CHAPTER 6 PRACTICE AND PROCEDURE

RULE 601 GENERAL PROVISIONS.

601.01 SCOPE OF RULES.

- (A) ~~This~~ Chapter 6 of these Rules applies in all investigations, proceedings, and rule-making conducted by the Department. The purpose of ~~this~~ Chapter 6 is to provide guidance and direction in the procedures used by the Department to formulate orders and conduct investigations and proceedings. In connection with any particular matter, reference should also be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Commissioner thereunder or any relevant laws of the State of Arkansas, which special requirements are controlling.
- (B) These Rules should be read in conjunction with the APA.

601.02 POWERS OF THE COMMISSIONER.

The Commissioner shall have all the powers necessary to conduct investigations proceedings in a fair and impartial manner and to avoid unnecessary delay. The powers of the Commissioner include, but are not limited to, the following:

- (A) Administer oaths and affirmations;
- (B) Subpoena witnesses, documents, or records;
- (C) Permit discovery by deposition or otherwise;
- (D) Preside over a hearing or designate ~~a one or more examiners, referees, or~~ hearing officers to preside over a hearing;
- (E) Maintain order by regulating the course of the hearing and the conduct of the parties and their attorney, including the power to receive relevant and material evidence, to exclude repetitious evidence, rule upon the admissibility of evidence and offers of proof, and exclude or suspend a party's attorney from the proceedings for dilatory, obstructionist, egregious, contemptuous, or contumacious conduct;
- (F) Schedule and hold prehearing conferences and conferences prior to and during the course of a hearing for purposes of settlement or simplification of issues;
- (G) Consider and rule upon all procedural and other pleadings and motions appropriate in a proceeding, including petitions to add a party or intervenor;

- (H) Recuse for bias or conflict of interest on a motion made by a party and appoint a new hearing officer in his place;
- (I) Take such action as the circumstances warrant against a person who engages in dilatory or obstructionist conduct during the course of a deposition, including exclusion of the offending person from participation in the deposition or contested case;
- (J) Perform all other functions necessary and appropriate to discharge the duties of Commissioner.

RULE 602 INVESTIGATIONS, PROCEEDINGS, AND HEARINGS.

602.01 INVESTIGATIONS.

- (A) Investigations conducted pursuant to Section 23-42-205 of the Act are not hearings, either formal or informal, as that term is used in this Rule.
- (B) Upon sufficient evidence, the Commissioner shall enter an Order directing an investigation and appointing investigative officers from the Staff.
- (C) Any person compelled to appear, or who appears by his own request in person at any investigative proceeding may be accompanied, represented and advised by counsel. ~~All witnesses shall be sequestered unless in the discretion of the officer conducting the investigation the witness is permitted to be present during the examination of any other witness called in such proceeding.~~
- (D) The right to be accompanied, represented and advised by counsel shall mean the right of a person testifying to have an attorney present with him during any investigative proceeding and to have his attorney advise such person before, during and after the conclusion of such examination; question such person briefly at the conclusion of the examination to clarify any of the answers such person has given; and, make summary notes during such examination solely for the use of such person.

602.02 PROCEEDINGS AND HEARINGS.

(A) GOVERNING LAW AND PROCEDURE.

All formal hearings before the Commissioner shall be in accordance with the provisions of the Act, the APA and these Rules.

(B) COMMENCEMENT OF A PROCEEDING.

The filing of a pleading, other than a request for subpoena or a request for an order directing investigation and designating officers pursuant to Section 23-42-

205 of the Act, by the Staff with the Commissioner shall be deemed to be the institution of a proceeding. Entering of a summary order postponing or suspending effectiveness of a registration shall be deemed to be the institution of a proceeding.

(C) TYPES OF HEARINGS.

The Department shall engage in two forms of hearings:

- (1) Informal Hearings or Conferences. Informal hearings or conferences conducted on an informal basis, at the direction of the Commissioner or by mutual consent, ~~upon reasonable notice to all of the parties, may be held in person at a specified time and place or with the Commissioner by telephone. for the purpose of scheduling the course and conduct of the proceeding.~~ Informal hearings or conferences may be held called by the Commissioner or hearing officer, upon reasonable notice, ~~to all parties,~~ prior to or subsequent to a scheduled formal hearing, or in circumstances where no pleading was filed and no formal hearing has yet been scheduled, or during a recess of ~~the a~~ formal hearing. Issues that may be determined at an informal hearing or conference include the following:
 - (a) Clarification and simplification of the issues as to pleadings filed;
 - (b) Exchange of witnesses and exhibit lists and copies of exhibits;
 - (c) Stipulations, admissions of fact, and the contents, authenticity, and admissibility into evidence of documents;
 - (d) Matters of which official notice may be taken;
 - (e) Issues relating to witnesses and exhibits;
 - (f) Summary disposition of any and all issues;
 - (g) Resolution of document production issues or disputes;
 - (h) Amendments to pleadings;
 - (i) Need for formal action by the Department;
 - (j) Possibility of settlement among the parties; and,
 - (k) Such other matters as the Commissioner determines to be within the scope of such a informal hearing or conference ~~or informal hearing.~~
- (2) Formal Hearings.

- (a) Parties to the proceedings before the Commissioner shall be styled Staff, applicants, issuers, broker-dealers, agents, investment advisers, representatives, petitioners, intervenors, complainants, or respondents, etc., according to the nature of the proceedings and relationship of the parties thereto.
- (b) All pleadings, applications, complaints, answers, responses and replies shall be liberally construed with a view to effect justice between the parties, and the Commissioner will at every stage of any proceeding disregard errors or difficulties in the pleadings, applications, complaints, answers, responses and replies or proceedings which do not materially affect the substantive rights of the parties involved.
- (c) Pre-Hearing Orders. At or within a reasonable time following the conclusion of a scheduling conference or any pre-hearing conference, the Commissioner may serve on each party an order setting forth any agreements reached and any procedural determinations made. If the Commissioner has ordered a party to disclose all witnesses or exhibits, no witness may testify and no exhibit may be introduced at the hearing if such witness or exhibit was not disclosed pursuant to such order, unless the Commissioner allows a party the sufficient time to prepare in light of the undisclosed witness or exhibit.
- (d) Informal Discussions. Following any discussion among the Commissioner and the parties addressing any issues in a contested case that occurs during a hearing recess, the Commissioner shall place the substance of the communication on the record including any action taken and any agreements made by the parties as to any matters that were discussed.

RULE 603 PLEADINGS AND PRACTICE.

603.01 PLEADINGS ALLOWED.

Pleadings shall include all forms of petitions, requests, complaints, answers, responses, replies, proposals, ~~requests~~, notices, applications, briefs, and filings of any nature that are placed before the Commissioner.

603.02 FORM.

The form to be followed in the filing of pleadings pursuant to these Rules will vary to the extent necessary to provide for the nature of the legal rights, duties, or privileges involved therein. Except as otherwise provided by law or the Commissioner otherwise determines, the pleadings shall include the following:

- (A) A statement setting forth clearly and concisely the authorization or other relief sought, as well as:
- (1) The exact legal name of each person seeking the authorization or relief and the address or principal place of business of each such person, unless the pleading is filed by the Staff. If any applicant, petitioner, respondent, or movant is a corporation, limited liability company, partnership, trust, association, or other organized group, it shall also specify the state under the laws of which it was created or organized;
 - (2) The name, title, address, and telephone number of the attorney to whom correspondence or communications in regard to the pleading is to be addressed. Notice, orders and other papers may be served upon the person so named and such service shall be deemed to be service upon the petitioner, respondent, or applicant;
 - (3) A concise and explicit statement of the facts on which the Commissioner is expected to rely in granting the authorization or other relief sought; and
 - (4) An explanation of any unusual circumstances involved in the pleading to which the Commissioner will be expected to direct particular attention, including the existence of emergency conditions or any request for the granting of interlocutory relief by way of an interim order during the pendency of the pleading.
- (B) Any exhibits, sworn written testimony, data, models, illustrations, or other materials that the applicant, petitioner, respondent, or movant deems necessary or desirable to support the granting of the pleading or that any statute or regulation may require for the lawful determination of the pleading.
- (C) All documents, whenever practicable, shall be printed, typewritten, or reproduced on one side of the paper only, and double-spaced with a normal margin on all four sides. All pleadings shall be on paper 8 ½ by 11 inches in size.
- (D) The venue as “Before the Arkansas Securities Commissioner,” the title of the proceedings, the case number assigned, and an appropriate designation (e.g. Petition, Request, Motion, Brief, Pleading).

603.03 MOTIONS.

- (A) All requests for relief will be by motion. Motions must be in writing or orally if made on the record during a hearing, unless the Commissioner directs that such motion be reduced to writing.

- (B) A motion must fully state the relief sought and the grounds relied upon. It may be accompanied by a proposed order. Written memoranda, briefs, affidavits or other relevant materials or documents may be filed in support of a motion.
- (C) The original written motion shall be filed with the Commissioner. There shall be an original and two copies of each motion and each exhibit.
- (D) A response to a motion must be filed by a party within 10 days of the date of service of the written motion. This time may be extended as permitted by the Commissioner for good cause shown.
- (E) No oral arguments may be held on written motions except as otherwise directed by the Commissioner.
- (F) The Commissioner shall not rule on any oral or written motion before each party has had an opportunity to respond. The failure of a party to oppose a motion is deemed consent by that party to the entry of an order granting the relief sought.
- (G) The Commissioner or his designee as hearing officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a hearing officer, other than the Commissioner, will not enter a dispositive order unless expressly authorized in writing to do so.
- (H) Upon written request from a respondent made no less than ten days prior to a scheduled hearing, the following information ~~under Section 25-15-208(a)(3) of the APA~~ shall be provided;
 - (1) The names and addresses of persons whom the Staff intends to call as witnesses at any hearing;
 - (2) Any written or recorded statements and the substance of any oral statements made by the license holder, or a copy of the same;
 - (3) Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations, scientific tests, experiments, or comparisons, or copies of the same;
 - (4) Any books, papers, documents, photographs, or tangible objects which the Staff intends to use in any hearing or which were obtained from or belong to the license holder, or copies of the same;
 - (5) Disclosure shall not be required of research or records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the Staff or members of the legal Staff or other state agents of the Staff.

603.04 BRIEFS.

Briefs may be filed by a party or interested non-party either before or during the course of a hearing or within such time as the Commissioner designates. Failure to file a brief shall in no way prejudice the rights of any party. The order and timing of filing briefs or reply briefs shall be designated by the Commissioner. A party may request an extension of the briefing schedule set by the Commissioner prior to the due date. Late briefs may be considered by the Commissioner at his discretion.

603.05 COMPUTATIONS OF TIME.

In computing any period of time prescribed or allowed by the Act or these Rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legally-declared state holiday. When the period of time prescribed or allowed is less than ten days, intermediate Saturdays, Sundays, and legally declared state holidays shall be excluded in the computation.

603.06 EXTENSIONS OF TIME.

- (A) Except as otherwise provided by law, the Commissioner may, for good cause shown, extend any time limit prescribed or allowed by the Rules or by any notice or order issued in a contested case, hearing, or other proceeding.
- (B) In determining whether to grant an extension of time, the Commissioner may consider:
 - (1) Prior continuances or extensions of time;
 - (2) The interests of all parties;
 - (3) The likelihood of informal settlements;
 - (4) The existence of an emergency;
 - (5) Any objection;
 - (6) Any applicable time requirement;
 - (7) The existence of a conflict of the schedules of attorneys, parties, or witnesses;
 - (8) The time limits of the request; and
 - (9) Other relevant factors.

- (C) Any party may request an extension of time via a motion. The Commissioner may grant extensions of time once notice and opportunity to respond is afforded to all parties. The Commissioner may grant extensions on his own motion.
- (D) Requests for extensions of time, other than motions for continuances, must be made as soon as practicable and, except in cases of emergencies, no later than five days prior to the date noticed for the hearing. The Commissioner may require documentation of any grounds for extensions.

603.07 EFFECT OF FILING.

The filing with the Commissioner of any pleadings, requests for no action or interpretive opinions, or any other document shall not relieve any person of the obligation to comply with any statute, rule, or order of the Commissioner. Acceptance of such filing by the Commissioner shall not constitute a waiver of any failure to comply with the Act or these Rules. Where appropriate, the Commissioner may require the amendment of any filing.

603.08 FILING AND SERVICE.

- (A) Any pleading filed by the Staff; or ~~notice of hearing~~ summary order issued by the Commissioner; for the purpose of commencing a proceeding shall be served on each respondent by personal service, registered or certified mail, or any express delivery service which provides a written confirmation of delivery. ~~For purposes of this Rule, service by the Department upon any registrant may be by First Class United States Mail to the business address of the registrant.~~
- (B) Following the date of commencement of a proceeding, all pleadings may be filed with the Commissioner by United States Mail or hand-delivery.
- (C) ~~A copy of every pleading~~ Pleadings filed with the Commissioner shall reflect showing the parties upon whom the pleading was served. ~~shall be placed in the Commissioner's files and shall be prima facie evidence of such service and the date of such service.~~
- (D) A copy of every pleading filed with the Commissioner by a party shall be served upon the attorney of record for every other party, and upon any person appearing *pro se*. ~~A signed Certificate of Service shall be included in all pleadings filed with the Commissioner. These service requirements shall not apply to summary orders or requests for Orders to cease and desist pursuant to Section 23-42-209.~~
- (E) Written interrogatories, requests for production, and other discovery requests shall not be filed with the Commissioner, but shall be served by the party making the discovery request upon the attorney of record for every other party, and upon any person appearing *pro se*. ~~A signed Certificate of Service shall be included in all written discovery requests served by any party.~~

603.09 SUBMISSION OF INFORMATION.

Any information filed or submitted to the Department in connection with an application, subpoena, or otherwise given voluntarily to the Department may, where competent and relevant, be used in any criminal prosecutions under the Act or other laws of the State of Arkansas or other jurisdiction.

RULE 604 HEARING PROCEDURES.

604.01 NOTICE OF HEARINGS.

- (A) ~~In all proceedings,~~ A notice of hearing ~~may~~ shall be served upon each party. This may be by hand delivery or United States Mail within a reasonable amount of time prior to the hearing. For purposes of this Rule, service of a notice of hearing by the Commissioner upon any registrant may be by United States Mail to the business address of the registrant.
- (B) The notice of hearing will include:
- (1) A statement of the time, place, and nature of the hearing;
 - (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (3) The name(s) of the respondents; and
 - (4) A short and plain statement of the matters of fact and law asserted.
- (C) The Commissioner may in his discretion amend the notice of hearing at any stage of a proceeding provided that the parties are given reasonable notice of the amendment and allowed sufficient time to prepare their case in light of the amendment.

604.02 RIGHTS OF WITNESSES.

Any person who appears and testifies in a deposition, under oath, or in a contested case, may be accompanied, represented and advised by an attorney. The right to be accompanied, represented, and advised by an attorney means the right of a person testifying to have an attorney present at all times while testifying and to have an attorney:

- (A) Advise the person before and after conclusion of the testimony;
- (B) Question the person briefly at the conclusion of testimony to clarify any of the answers given; and
- (C) Make summary notes during the testimony solely for the use of the person.

604.03 NOTICE TO INTERESTED PARTIES.

If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of a persons who are not parties, the Commissioner may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

604.04 SUBPOENAS.

- (A) At the request of any party, the Commissioner shall issue subpoenas for the attendance of witnesses at the hearing. The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents.
- (B) A subpoena for appearance may be served via certified mail or by personal service by any person specified by law to serve process or by any person who is not a party and who is eighteen years of age or older. Delivering a copy to the person named in the subpoena shall make service. Proof of service may be made by affidavit of the person making service. The party seeking the subpoena shall have the burden of obtaining service of the process and shall be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The witness must be served a reasonable time prior to the hearing.
- (C) Any motion to quash or limit the subpoena shall be filed with the Commissioner and shall state the grounds relied upon.

604.05 HEARING LOCATION.

Unless by direction of the Commissioner a different place is designated, all hearings shall be held at the office of the Commissioner.

604.06 CONSOLIDATION AND SEVERANCE.

- (A) If there are separate matters that involve related questions of law or fact, or identical parties, the Commissioner for good cause, upon the Commissioner's own motion or upon motion by a party, may consolidate matters if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.
- (B) The Commissioner may, for good cause, upon the Commissioner's own motion or upon motion by a party, sever the proceeding for separate resolution of the matter as to any party or issue. In determining whether to sever the proceeding, the Commissioner shall consider whether any undue prejudice or injustice would result from not severing the proceeding outweighs the interests of judicial

economy and expeditiousness in the complete and final resolution of the proceeding.

~~604.07~~ CONTINUANCES.

- ~~(A)~~** The Commissioner may continue the hearing on his or her own motion or on the motion of any party on such terms as the Commissioner may require. The Commissioner may grant any additional requests for a continuance for settlement purposes or in the event that the denial of a continuance request would substantially prejudice a party's or the Department's case.
- ~~(B)~~** In determining whether to grant a continuance, the Commissioner may consider:
- ~~(1)~~** Prior continuances or extensions of time;
 - ~~(2)~~** The interests of all parties;
 - ~~(3)~~** The likelihood of informal settlements;
 - ~~(4)~~** The existence of an emergency;
 - ~~(5)~~** Any objection;
 - ~~(6)~~** Any applicable time requirement;
 - ~~(7)~~** The existence of a conflict of the schedules of attorneys, parties, or witnesses;
 - ~~(8)~~** The time limits of the request; and
 - ~~(9)~~** Other relevant factors.

~~604.08~~ 604.07 CONDUCT OF HEARING.

- (A)** The Commissioner presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings; provided, however, any hearing officer other than the Commissioner shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.
- (B)** All objections must be made in a timely manner and stated on the record.
- (C)** Parties have the right to participate or to be represented by an attorney in hearings or prehearing conferences related to their case.

- (D) Subject to the terms and conditions prescribed by the APA, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, engage in oral argument, and, upon request may submit briefs.
- (E) The ~~hearing~~ Commissioner is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

~~604.09~~ 604.08 ORDER OF PROCEEDINGS.

The Commissioner will conduct the hearing in the following manner:

- (A) The Commissioner will give an opening statement, briefly describing the nature of the proceedings;
- (B) The parties are to be given the opportunity to present opening statements;
- (C) The parties will be allowed to present their cases in the sequence determined by the Commissioner.
- (D) Each witness must be sworn or affirmed by the Commissioner, or the court reporter, and be subject to examination and cross-examination as well as questioning by the Commissioner. The Commissioner may limit questioning in a manner consistent with the law.
- (E) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.
- (F) The Commissioner may, at any time prior to the rendering of a final decision, reopen the hearing upon the motion of the Commissioner or any party for good cause shown. The parties shall be notified of the reopening and the hearing shall be convened not less than ten days after the sending of such notice unless waived by the parties.

~~604.10~~ 604.09 FAILURE TO REQUEST OR APPEAR AT A HEARING.

- (A) When a party fails to request a hearing within the time specified in the cease and desist order or other administrative order, the allegations against the party may be deemed admitted.
- (B) If a party fails to appear or participate in an administrative adjudication after proper service of notice, the Staff may proceed with the hearing and the Commissioner may render a decision in the absence of the party. The allegations against the party may be deemed admitted. Without further proceedings or notice to the party, the Commissioner shall issue a final order. The Commissioner may,

if deemed necessary, receive evidence from the Staff, as part of the record, concerning the appropriateness of the amount of any civil penalty sought in the request.

- ~~(C) A party that failed to request or appear at a hearing may file a petition for reconsideration of a final decision.~~

~~604.11~~ 604.10 APPEARANCE, PRACTICE, AND WITHDRAWAL BEFORE THE COMMISSIONER.

- (A) Any party appearing in any proceeding has the right, at ~~his or her~~ the party's own expense, to be represented by an attorney. The attorney must be duly admitted to practice law in the State of Arkansas and in good standing with the bar of the State of Arkansas. The Commissioner, at his discretion, may require any attorney who desires to represent a person before the Commissioner to first file with the Commissioner a written declaration that he is currently qualified and is authorized to represent the particular party in whose behalf he acts. Attorneys in good standing from other jurisdictions may request and, for good cause shown, be allowed to appear in a contested case, provided an attorney admitted to practice in Arkansas is present during the entire proceeding, signs all pleadings and other papers filed in the proceeding, and agrees to take full responsibility for supervising the conduct of the attorney.
- (B) The respondent may appear on his or her own behalf in a contested case. Other duly authorized individuals including a partner, member, or manager of a partnership or limited liability company; may appear and represent the partnership or limited liability company; and a duly authorized officer, director or employee of any agency, institution, corporation or authority may appear and represent the agency, institution, corporation or authority.
- (C) Any party acting *pro se* shall so notify the Commissioner in writing. The notice of appearance shall include accurate contact information.
- (D) Service on the attorney of record is the equivalent of service on the party represented.
- (E) After a notice of appearance is filed by a party or attorney, copies of all subsequent pleadings, notices, rulings, applications, response, replies or decisions shall be provided to the person named in the notice of appearance and Staff designated to represent the Department.

~~604.12~~ 604.11 RECORDING THE PROCEEDINGS AND TRANSCRIPT CORRECTIONS.

- (A) The responsibility to record the testimony heard at a hearing is borne by the Staff Department. Any party may request a copy of the transcript from the court

reporter and such copy shall be made available to any party upon payment of the cost of the transcript.

- (B) The Commissioner shall have the authority to order the transcript corrected upon a motion to correct, upon stipulation of the parties, or upon the Commissioner's own motion following notice to the parties. The Commissioner may call for the submission of proposed corrections and may order the corrections at appropriate times during the course of the proceedings. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Transcript corrections may be incorporated into the record at any time during the hearing or after the close of evidence, but not more than thirty days from the date of receipt of the transcript by the Commissioner.

~~604.13~~ 604.12 EVIDENCE.

- (A) The Commissioner shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts and generally recognized technical or scientific facts.
- (B) Stipulation of facts is encouraged. Parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents that may be entered as evidence at the commencement of or during the hearing. The Commissioner may make a decision based on stipulated facts.
- (C) A party seeking admission of an exhibit must provide four copies of each exhibit at the hearing. The Commissioner must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.
- (D) Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a party, at the time an evidentiary ruling is sought, makes known to the Commissioner the objections to such action and the grounds for such objection. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. Failure to object to the admission of evidence or any ruling constitutes a waiver of the objection. The Commissioner may rule on the objection at the time it is made or may reserve the ruling until the written decision.
- (E) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded or rejected oral testimony will briefly provide a summarized statement of the testimony. If the excluded evidence consists of a document, record, or written form, a copy of such evidence shall be marked as part of an offer of proof and inserted in the record.

- (F) Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.
- (G) ~~Reasonable inferences.~~ The Commissioner may base ~~its~~ the finding of facts upon reasonable inferences derived from ~~other~~ the evidence received. The finder of fact shall have the authority to employ the Staff's experience, technical competence and specialized knowledge in evaluating the evidence presented at the hearing for the purpose of making findings of fact and arriving at a decision in any contested case.
- (H) At any stage of the hearing, the Commissioner may call for further evidence upon any issue and require that such evidence be produced by the relevant party ~~or parties concerned~~, or may authorize any party to file specific documentary evidence as part of the record, either at the hearing or within a specified time, provided every party shall be afforded a reasonable opportunity to review and rebut or object to such evidence.

~~604.14~~ 604.13 **ORDERS.**

- (A) **Generally.** All decisions and orders of the Commissioner concluding a proceeding shall be in writing ~~that will be~~ and served on all parties.
 - (1) The order will include a recitation of facts found based on testimony, ~~and~~ other evidence presented, and reasonable inferences derived from the evidence pertinent to the issues of the case. It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent.
 - (2) The order will be served personally or by mail on the parties. If respondent is represented by an attorney, service of the order on respondent's attorney shall be deemed service on the respondent.
- (B) **Summary Order.** In addition to the procedures set forth in Rules 602.02, 604.01, 604.10, 605.01, 606.01, and 604.14(A), the Commissioner may issue a summary order:
 - (1) Whether a person is an applicant, registrant, issuer, or other person, to cease and desist from an act or practice or apply directly to a court of competent jurisdiction for such relief as ~~he~~ the Commissioner deems appropriate pursuant to Section 23-42-209 of the Act:
 - (a) If it is in the public interest; and
 - (b) The Commissioner deems it necessary.

- (2) To retroactively deny or suspend effectiveness of a registration statement filed pursuant to Section 23-42-402 of the Act if the required notification and pricing amendment is not received.
- (a) If such ~~an~~ summary order is entered, the Commissioner must promptly notify the registrant by electronic mail (e-mail), facsimile or telephone call followed by a letter.
 - (b) If the registrant proves compliance, the summary order is void as of the time of its entry.
 - (c) The summary order remains in effect pending final determination of a proceeding to deny or revoke the effectiveness.
 - (d) The date for a hearing on a summary order shall be set no more than fifteen days after receipt of a written request to hold such a hearing; if no hearing is requested, the summary order will remain in effect until modified or vacated by the Commissioner.
- (3) To suspend or postpone registration of an applicant or registration filed pursuant to Section 23-42-301 of the Act if the Staff learns of an applicant's or registrant's failure to comply with the Act or Rules or when it is determined that the applicant or registrant might be subject to one of the provisions set forth in Section 23-42-308(a) of the Act or a cancellation of registration pursuant to Section 23-42-308(d) of the Act.
- (a) If such ~~an~~ a summary order is entered, the Commissioner must promptly notify the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative). Notification or service shall be by certified or registered United States Mail.
 - (b) The summary order remains in effect pending final determination of a proceeding to deny or revoke the application or registration as a result of a hearing.
 - (c) The date for a hearing on a summary order shall be set no more than fifteen days after receipt of a written request to hold such a hearing; if no hearing is requested, the summary order will remain in effect until modified or vacated by the Commissioner.
 - (d) A summary order entered prior to a hearing can be used to postpone or suspend registration or withdrawal. Revocation can occur only after the filing of a pleading and notice of hearing.

- (C) **Stop Order.** A stop order, as discussed in Rule 604.14(B)(2) above, referring to Section 23-42-402 of the Act, may mean a final order entered in disposition of the institution of a proceeding except as that term is used in Section 23-42-509 of the Act.
- (D) **Amended Order.** All orders may be vacated or modified if conditions change or it is otherwise in the public interest to do so.
- (E) Nothing shall prohibit or restrict informal disposition of a pleading or order by stipulation, settlement, consent, or default in lieu of a formal or informal hearing on the matter or in lieu of sanctions imposed. ~~But if An order shall be entered if~~ administrative proceedings have been instituted or a pleading filed. ~~an order shall be entered.~~ All orders shall be public.

~~604.15~~ 604.14 **RIGHT TO APPEAL.**

A person who is aggrieved by the final decision of the Commissioner may seek judicial review of the decision in accordance with the provisions of Section 23-42-210 of the Act.

RULE 605 SECURITIES REGISTRATION.

605.01 SECURITIES REGISTRATION STATEMENT.

- (A) When the Staff or the Commissioner learns of an applicant's or registrant's possible failure to comply with the Act or Rules or when it is determined that the applicant or registrant might be subject to one of the provisions set forth in Section 23-42-405(a) of the Act:
 - (1) The applicant may be notified by deficiency letter or telephone, and, after adequate notice, the staff may initiate legal proceedings with the Commissioner to deny, suspend or revoke the effectiveness of the registration statement, or
 - (2) The Commissioner may enter a summary order suspending or postponing effectiveness of the registration statement pending final determination of a proceeding to deny or revoke the effectiveness.
 - (3) If an applicant's response to a deficiency letter or telephone call is not deemed to show compliance, the applicant may be allowed to withdraw the registration statement prior to its effectiveness.
- (B) If a pleading or summary order is entered, the applicant, registrant, issuer and the person on whose behalf the securities are to be or have been entered shall be notified by certified or registered United States Mail.

RULE 606 EXEMPT SECURITIES.

606.01 SECURITIES EXEMPTED FROM REGISTRATION.

- (A) A security or transaction exemption filed in accordance with Sections 23-42-503(d) or 23-42-504(b) of the Act, may be disallowed when:
- (1) The exemption under which the filing was made is not available to the issuer or applicant;
 - (2) The filing is not complete;
 - (3) The fee is not sufficient;
 - (4) The filing fails to comply with any provision of the Act or Rules; or
 - (5) The filing indicates conduct prohibited by the Act, including but not limited to false or misleading statements or omissions of material fact.
- (B) In the event any of the above grounds of Rule 606.01(A) are present with respect to an application, the applicant will be notified by deficiency letter by United States Mail, facsimile, or electronic mail on or before the tenth business day after receipt of the filing. Such deficiency letter shall serve as notice in lieu of a pleading or order. Upon an applicant's failure to satisfy the deficiencies:
- (1) The applicant may request that the filing be withdrawn,
 - (2) An order disallowing the security or transactional exemption will be entered, or
 - (3) If applicable, a summary order or a pleading to deny the exemption will be entered.
- (C) A security or transaction exempt pursuant to Sections 23-42-503(a)(7), 23-42-503(a)(8), 23-42-503(b), or 23-42-503(c) and Sections 23-42-504(a)(9), and or 23-42-504(10) of the Act may be denied prior to issuance or execution of security or transaction when it is determined:
- (1) The exemption claimed is not available;
 - (2) The security or transaction fails to comply with any provisions of the Act or Rules;
 - (3) There has been or is about to be conduct prohibited by the Act; or
 - (4) A required filing was not made.

- (D) A security or transaction exemption subject to Sections 23-42-503(a)(7), (a)(8), (b) or (c) or 23-42-504(a) of the Act may be revoked after issuance or execution of security or transaction when it is determined that:
- (1) The exemption claimed was not available;
 - (2) The filing, if made, was not complete or contained false and misleading statements ~~of~~ or omissions of material fact;
 - (3) A fact or event becomes known which would have been the cause of a disallowance or denial of the exemption had it been known;
 - (4) The claimant failed to comply with the Act or Rules; or
 - (5) A claimant did not comply with representations made or conditions imposed.
- (E) The Commissioner may not disallow, deny or revoke an exemption for a security claimed pursuant to Sections 23-42-503(a)(1), (2), (3), (4), (5), (6), or (9) of the Act, however, the Commissioner may take or recommend an action pursuant to the applicable investigative, injunctive, civil or criminal provisions of the Act.
- (F) Under the circumstances set forth in Rule 606.01(B) above, the Staff may file a pleading to disallow, deny or revoke an exemption or the Commissioner may summarily disallow, deny or revoke an exemption.
- (G) If a pleading or order is entered, all interested parties shall be notified by personal service, certified or registered United States Mail, or any express delivery service that provides a written confirmation of delivery.

RULE 607 REGISTRATION OF INDIVIDUALS.

607.01 BROKER-DEALER, AGENT, INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE.

- (A) An applicant or registrant may agree in writing to allow the Commissioner or the Staff additional time after registration or withdrawal becomes effective in which to investigate or examine facts or transactions thus extending the time limitation in which a suspension or revocation proceeding can be instituted.
- (B) When the Staff or the Commissioner learns, through examination or otherwise, of an applicant's or registrant's possible failure to comply with the Act or Rules or when it is determined that the applicant or registrant might be subject to one of the provisions set forth in Section 23-42-308(a) of the Act or a cancellation of registration pursuant to Section 23-42-308(d) of the Act, the Staff may by letter notify such applicant or registrant of the alleged violation or action and set a

period of time in which applicant or registrant must show compliance. If the applicant's or registrant's response to the Staff's letter is deemed not to show compliance with the Act or Rules or shows the applicant or registrant to be subject to Section 23-42-308(d) of the Act, a pleading may be filed by the Staff with the Commissioner asking that the matter be set for a hearing. The sending of such a letter shall not be deemed to be the institution of a proceeding.

- (C) If the Staff files a pleading with the Commissioner or the Commissioner summarily suspends or postpones registration, the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative) shall be promptly served with a copy of the pleading or order.
- (D) If the Commissioner issues an order which imposes a suspension, revocation, or cancellation of the registration of a person or bars that person from further association with any registrant, the registrant shall not allow that person to remain associated with it in any capacity whatever, including clerical or ministerial functions. When an individual is suspended, a registrant in addition to the above, shall not pay or credit any salary, commission, profit, or other remuneration which results directly or indirectly from any security transaction which that individual might have earned during the period of suspension.